

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

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4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 \* \* \* \* \*

7 BEFORE: REPRESENTATIVE ALAN D. CLEMMONS, CHAIRMAN

8 ERIN CRAWFORD, CHIEF COUNSEL

9 SENATOR LARRY A. MARTIN

10 REPRESENTATIVE BRUCE W. BANNISTER

11 MS. KRISTIAN BELL

12 MR. ROBERT M. WILCOX

13 SENATOR GERALD MALLOY

14 REPRESENTATIVE DAVID J. MACK, III

15 MR. MICHAEL HITCHCOCK

16 MS. SUSAN T. WALL

17 \* \* \* \* \*

18 DATE: November 16th, 2015

19 TIME: 10:16 A.M.

20 LOCATION: Blatt Building, Room 516

21 1101 Pendleton Street

22 Columbia, South Carolina 29201

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25 REPORTED BY: LISA F. HUFFMAN, COURT REPORTER

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(No Information Requested.)

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dashes [--] Intentional or purposeful interruption  
[ph] Denotes phonetically written  
[sic] Written as said

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## P R O C E E D I N G S

CHAIRMAN CLEMMONS: The Judicial Merits Selection Committee is now back on the record. For the record, I would like to state that we have been in executive session, however, no decisions were made and no votes were taken during executive session. Chief Counsel.

MS. CRAWFORD: Mr. Chairman, at this time I would like to present the Commission with the judicial seats that we expect to screen in the spring of 2016.

CHAIRMAN CLEMMONS: Excuse me, Ms. Crawford. Before you do that let me recognize Representative Kennedy who is with us. Representative Kennedy, good to have you with us today.

REPRESENTATIVE KENNEDY: Thank you so much.

CHAIRMAN CLEMMONS: Please continue.

MS. CRAWFORD: Yes, Mr. Chairman. The handout, I believe, is in Tab 5. It lists all the positions to be screened for the elections. In the spring, it looks like we have the Supreme Court, one open seat. Circuit Court, Judge Couch, retired, effective

1 August 1. We haven't received his  
2 notification yet for retirement, but he plans  
3 to send that in January. We'll have two open  
4 seats in Family Court, and then we should have  
5 couple more, or least one possibly -- we'll  
6 have some additional seats. That's in your  
7 notebook.

8 At this time, we do have a presentation  
9 of the South Carolina Bar Judicial  
10 Qualifications Committee, co-chair Scott  
11 Moise, and an Upstate Citizen Committee, Nancy  
12 Jo Thomason.

13 CHAIRMAN CLEMMONS: Thanks very much.  
14 Let's proceed and hear from our presenters.  
15 Good morning.

16 MS. MOISE: Good morning.

17 CHAIRMAN CLEMMONS: It's good to have you  
18 with us today.

19 MS. MOISE: Thank you. I'm happy to be  
20 here. Are y'all ready for me to begin?

21 CHAIRMAN CLEMMONS: If you would, please,  
22 make your presentation -- ladies and gentlemen  
23 of the Commission, just so you know, I invited  
24 these two presenters to join us today to give  
25 us a sense of what it is that the two bodies

1 do prior to compiling their reports, which are  
2 required by statute to be a part of this  
3 process. We have had some ask questions about  
4 what the procedures are and many have  
5 considered what weight to assign to those  
6 reports. So it's a pleasure to have you with  
7 us today, so that you can help educate us as  
8 to the process that's involved. Thank you.  
9 Please proceed.

10 MS. MOISE: Thank you. I'm here today.  
11 I've got Donna Tillis is here. She's also on  
12 the Judicial Qualification Committee with me,  
13 and Kali is here too. And we really  
14 appreciate the opportunity to come here. We  
15 spend a lot of time. We take this process  
16 very seriously. And we put a lot of time and  
17 effort into it, and we want to get it right  
18 for you because this is the report that goes  
19 to you. And so we do take it very seriously.  
20 And happy to be here with you.

21 First of all, the what is the purpose --  
22 (Brief pause.)

23 MS. MOISE: The purpose for the Judicial  
24 Qualification Committee for the South Carolina  
25 Bar is to report the collective opinion of the

1 members of the Bar that are surveyed for all  
2 the candidates to the South Carolina Supreme  
3 Court, Court of Appeals, the Family Court and  
4 the Administrative Law Judge. And then the  
5 report then is obviously -- it's to come to  
6 you.

7 As an overview of our investigative  
8 procedure, we make -- who are we? The  
9 committee was created in January of 1992 where  
10 it's all made up of members of the South  
11 Carolina Bar. We, the committee, are  
12 appointed by the president of the South  
13 Carolina Bar, with the approval of the Board  
14 of Governors.

15 We currently have 101 members, which is a  
16 lot of members, but not everybody on the  
17 committee will participate in every cycle.  
18 Some people, you know, being a bunch of  
19 lawyers, if somebody has a trial coming up or  
20 there's some reason why they can't devote the  
21 time that it takes to get this thing right,  
22 then they will sit out. This time we really  
23 needed as many people as we could get because  
24 we had such a large number of candidates. But  
25 that is how many people that we can draw from.

1           We seek diversity in all of the  
2           appointments. The diversity is racial and  
3           gender, but it goes beyond that. Because the  
4           candidates come from all over the state and  
5           our members come from all over the state, we  
6           look for diversity in that too. We try to  
7           have just as much diversity on this committee  
8           as we can get, so that everybody is  
9           represented.

10           I am a co-chair. We have two co-chairs  
11           this time. I'm a co-chair and Jared Libet  
12           from the South Carolina Attorney General's  
13           Office is also my co-chair. And we are  
14           appointed by the president of the South  
15           Carolina Bar for a two year term.

16           We have a published process, which is  
17           found, our policies and procedures are found  
18           in the Lawyers Desk Book. And that is our  
19           Bible. That's what we -- I have right here.  
20           All of us have copies of that, and that's out  
21           there for the public. But everything that we  
22           do is governed by that.

23           What do we do to train the members? We  
24           have a lot of new members come on and people  
25           rotate off and the training is key. When I

1 first got onto the committee, you know, I had  
2 to keep answering, when do we this, how do we  
3 do that, because we make calls. I just wasn't  
4 real sure about what the process was.

5 The last few years, we've really  
6 ratcheted it up the training. We have an  
7 initial call with the subcommittee chairs.  
8 The committee is divided into subcommittees,  
9 according to the regions. There are four  
10 regions in the state. And we have an initial  
11 meeting with the subcommittee chairs, where we  
12 go over everything with them and then they  
13 then go out and talk individually with the  
14 people on their subcommittee.

15 We give out the conflicts information.  
16 If someone has a substantial relationship or  
17 any reason that they bias them and they  
18 shouldn't participate, then that is reported  
19 to the chairs, and then they may say "Well, I  
20 just want to report this, but I think that I  
21 can go ahead and serve on the committee." But  
22 they don't make that decision; the chairs make  
23 that decision.

24 And my policy has been that if someone  
25 feels like they have any kind of conflict,

1           then I don't believe they should serve on -- I  
2           mean, they can serve on the committee, but not  
3           particular -- for that particular judge or any  
4           of the judges that are in for that same seat.  
5           So we give them that and try to get that  
6           resolved right up front.

7           The confidentiality rules, we can't do  
8           anything until we understand what the  
9           confidentiality oath is, and sign the oath and  
10          get it back. And at that point, then they can  
11          come onto the committee. We give them the  
12          rules and the procedures that we just talked  
13          about. We give them a stack of introductory  
14          materials, so that they know exactly what we  
15          expect out of them and how we do it. And as  
16          the person is on the committee longer, then  
17          they understand it better. But at first we  
18          want them to be very strict about what to say  
19          and that sort of thing, and always follow the  
20          rules.

21          And then, of course, like with your group  
22          and with the Citizens Committee, we give out  
23          the candidate's PDQs and make sure that they  
24          read those before we start cause, and we give  
25          them the schedule that we're going to follow.

1           So what is our investigation procedure.  
2           This is what takes so long. We're required to  
3           have 30 calls minimum for each candidate and  
4           include the five people that are identified by  
5           the candidate. And if it is a lawyer who is  
6           not a sitting judge, then they give us the  
7           names of the five people that are opposing  
8           them on cases and, you know, so we call them.  
9           If it is a sitting judge, they can give us  
10          five people that have appeared before them in  
11          contested matter. And so we call them.

12          We monitor the process with the help of  
13          the bar staff weekly and if we get information  
14          that turns negatively, we make additional  
15          calls. We try to go up to 40 for that,  
16          because we want to be extremely fair to the  
17          candidates, to make sure that we have bigger  
18          pool and make sure that we have more input,  
19          and not just 30. Sometimes we go over that.

20          Then every week the completed  
21          questionnaires from the calls are then sent to  
22          the subcommittee chairs, who will compile the  
23          information and then send it into the bar  
24          staff, who has a rolling -- they -- they  
25          compile it all on a rolling, weekly basis.

1           And then after all that is done, all the  
2 completed questionnaires, then we have the  
3 interviews with each candidate. And then  
4 after that, the full committee meets and  
5 votes.

6           Who is called? All JQC members are  
7 provided with lists of the practice areas for  
8 their region, and that's all the members of  
9 the bar in that region, and also, the practice  
10 areas of the people who live in that region.  
11 For instance, for Family Court, you know,  
12 that's sort of a specialized practice and not  
13 everybody will have been before the Family  
14 Court, so it's harder to get calls, the  
15 minimum calls, for those candidates.

16           So if we have the Family Court list of  
17 people who have joined the family section of  
18 the South Carolina Bar, then we know that  
19 they're probably going to have more experience  
20 with the people, and so we're more likely to  
21 get feedback. But we can call anybody that's  
22 on the list that is practicing.

23           The subcommittee chairs then, they take  
24 those lists and they divide them  
25 alphabetically and just randomly assign that

1 to people in their subcommittee. And by that  
2 I mean, let's say we have the county bar list  
3 and then we will say "I will take" -- if I'm  
4 the subcommittee chair, I might say "Okay,  
5 Donna, I want you to take all the As and Bs,  
6 and those are the people that you contact."  
7 And then the next person say, "Okay, I want  
8 you to take C and D." And that's so we don't  
9 duplicate the calls, but we can spread out and  
10 get everybody that we can.

11 Then the calls are then made randomly  
12 from the list by the subcommittee members.  
13 And we have questionnaires for the members to  
14 follow, so that we make sure that all of the  
15 nine evaluated criteria are covered. And so  
16 they follow that and they check it off on the  
17 questionnaires. And then those who sent back  
18 to the bar. Then we also solicit comments.

19 And these are the nine evaluated  
20 criteria. Those would be familiar to you  
21 because they're the same ones that you follow  
22 and that we obviously follow the same ones.  
23 We are required to do that, but it would be a  
24 big help to you if we didn't have the same  
25 criteria; we do.

1           And then like I mentioned earlier, weekly  
2 we follow up. We do that because particularly  
3 in a cycle like this one, with so many  
4 committee members and so many candidates, if  
5 we don't follow up with people weekly, then  
6 they get behind and you can't catch up. And  
7 we want everybody to do a good job. So we  
8 follow them weekly. And if it looks like  
9 certain regions are having trouble getting  
10 their numbers for the week, then we contact  
11 them and see if there's some way we can help  
12 them. Are they having problems? What can we  
13 do to get back on schedule? Then the South  
14 Carolina Bar staff makes a final compilation  
15 of all responses prior to the interviews.

16           Then for the interviews, we have at least  
17 three bar members. Usually it's more like  
18 five present for the interviews. We never  
19 have -- no candidate comes before the full  
20 committee, but it will be one of those smaller  
21 groups.

22           In the interviews, we inform the  
23 candidates of their right to send additional  
24 information into our committee if they want  
25 to. We tell them how to do it, who to send it

1 to and how long. We give them time to do that  
2 if after the interviews they feel like they  
3 want to provide more information.

4 We inform the candidates if there are any  
5 concerns, we raise those. We want them to  
6 have the opportunity to respond to that, to  
7 rebut that. We reserve confidentiality of all  
8 the people who have made comments. And  
9 whatever we get, we always protect the  
10 confidentiality of the people that we have  
11 called. But we do want to raise any kind of  
12 concerns.

13 We also tell them the good things said  
14 that are positive that we have gotten from the  
15 interviews. We ask the candidates themselves  
16 what they would like us to know about and hear  
17 what they have to say too, and get their  
18 input.

19 Then we have the final meeting. At the  
20 final meeting, we either have one or two --  
21 however many meetings it takes. This time we  
22 had two meetings because we had so many  
23 candidates. But the committee members are all  
24 provided with all the feedback that we've  
25 gotten and all of the information that we've

1 gotten from the interviews, from the calls,  
2 all of that was provided to the full  
3 committee.

4 Then we review each candidate's  
5 information. We discuss it. We determine at  
6 that point, do we need more calls? And if so,  
7 we will get more calls, and then come back for  
8 another meeting on the people that we need the  
9 additional calls for. And then at that point  
10 we take a vote and adopt the collective  
11 opinion that's reported through each  
12 candidate. And then the report then is sent  
13 to you for consideration.

14 And so I thank you again for the  
15 opportunity to come here, just delighted to be  
16 here. And now I will turn it over to Nancy  
17 Jo.

18 CHAIRMAN CLEMMONS: Ms. Moise, first of  
19 all, let me say thank you very much for your  
20 presentation today and for your service on  
21 this committee.

22 MS. MOISE: Thank you. I appreciate it.

23 CHAIRMAN CLEMMONS: It's very helpful to  
24 us in getting to where we need to be in the  
25 final process of screening these candidates.

1 Before you sit down, let me ask the Commission  
2 Members if they have any questions for you.

3 MS. MOISE: Sure.

4 CHAIRMAN CLEMMONS: Members?

5 (No response.)

6 CHAIRMAN CLEMMONS: Hearing none. Again,  
7 thank you so much for what you do.

8 MS. MOISE: Thank you.

9 CHAIRMAN CLEMMONS: Thank you. Good  
10 morning.

11 MS. THOMASON: Good morning.

12 CHAIRMAN CLEMMONS: Good to have you with  
13 us today.

14 MS. THOMASON: I'm Nancy Jo Thomason.  
15 I'm a lawyer in Anderson, South Carolina and  
16 I'm also the chairman of the Upstate Citizens  
17 Committee for screening for your Commission  
18 actually.

19 Similar to the Bar, but different from  
20 the Bar, number one, we have ordinary  
21 citizens, not just lawyers on each of our  
22 Citizens Committees. Also, little bit  
23 different from the Bar, we actually work for  
24 you. So your chairman, your vice-chairman  
25 appoint all of the members of each of the five

1 regional Citizens Committees. There are up to  
2 ten members on each of those committees. I've  
3 been the chairman of our committee for several  
4 years now, and I've actually been a member of  
5 the committee for quite a number of years.

6 The Citizens Committee came into being  
7 not long after this Commission was created. I  
8 think the legislation enacting the Citizens  
9 Committee was 1997. So I imagine the first  
10 time that the Citizens Committees did  
11 interviews and investigation was probably in  
12 98.

13 In my experience with the Citizens  
14 Committees, we do exactly the same review of  
15 the valuative criteria that Ms. Moise was  
16 discussing. Obviously, we are charged by your  
17 Commission and your rules to review those  
18 criteria. The difference is, we talk to a lot  
19 of people other than just lawyers. We start  
20 with each candidate's references and at least  
21 in our particular committee, we behave  
22 similarly to what I found to be the process  
23 that the Bar does when examining candidates  
24 who apply to be members of the Bar.

25 We take each of those references and say

1 "Hey, can you tell me two or three other  
2 people that can tell me about this candidate."  
3 Then when you talk to those, "Can you tell me  
4 two or three other people who can tell you  
5 about this candidate." So we branch out  
6 further than just who the candidate give us as  
7 their references.

8 Additionally, we make an effort with  
9 every single candidate to talk to the clerks  
10 of court, the bailiffs, the local law  
11 enforcement, people in the solicitor's office,  
12 the people that would have interactions with  
13 these candidates outside of their actual legal  
14 work.

15 As I told you, I've been on the committee  
16 for several years. I believe, without  
17 question, there have been at least four  
18 candidates who didn't make it to your desk  
19 because of the work that our particular  
20 Citizens Committee did. And in those  
21 particular cases -- four of which I know I can  
22 recall because they were quite controversial,  
23 within our subcommittee -- or within our  
24 committee, our Citizens Committee, those --  
25 the reasons that they chose to withdraw from

1 the race, the reasons that they chose not to  
2 proceed forward and end up appearing before  
3 you, had more to do with things that were  
4 going on in their personal lives and things  
5 that were at issue on a personal level than  
6 they were in how they behaved as, in most of  
7 these cases, as lawyers appearing before  
8 courts.

9 So other lawyers may have thought they  
10 were great lawyers, and people who worked with  
11 them thought they had great temperament. But  
12 we were able to find out things about them  
13 that may be people in the legal community  
14 didn't always know.

15 So I feel honored and privileged to be  
16 able to serve on this committee. I know that  
17 the ten members of my committee take it very  
18 seriously. We want to make sure that we leave  
19 no stone unturned as it were, so that you all  
20 get reports from us that are accurate and that  
21 are thorough, so that you can take that  
22 information and then move on to qualifying  
23 these candidates or not, if the case may be.

24 But I certainly believe that the Citizens  
25 Committees have performed well. I know that

1           there have been -- I've talked with other  
2           members of different areas of the state and I  
3           believe they've had some of the same  
4           experiences that our committee has had in  
5           being somewhat of a gatekeeper for you all, so  
6           that hopefully some of the more unpleasant  
7           controversies don't end up having to be dealt  
8           with by you all. And so we do our best.

9           We are required to perform under the  
10          rules that you all set for us. And currently  
11          we make sure that no more -- or no less than  
12          three of our committee members are on a  
13          subcommittee for each candidate coming  
14          through. But depending on -- for example, in  
15          our area, we have three judicial circuits, so  
16          it's Anderson, Oconee, Pickens, Greenville,  
17          Spartanburg, so it's a pretty wide area. And  
18          we have members of the committee from each of  
19          those areas. So usually we assign our  
20          subcommittees by geography and also by what  
21          they may or may not already know about some of  
22          those candidates.

23          Be glad to answer any questions, as long  
24          as you promise not to let Professor Wilcox  
25          drill me on any property law.

1 MR. WILCOX: I've had my chance.

2 CHAIRMAN CLEMMONS: Thank you very much.

3 MS. THOMASON: Thank you.

4 CHAIRMAN CLEMMONS: Let me ask the  
5 Commission members if they have any questions  
6 for you before you sit down. Any questions?

7 SENATOR MARTIN: I just have a comment.

8 CHAIRMAN CLEMMONS: Go right ahead. Yes,  
9 sir, Senator.

10 SENATOR MARTIN: I remember when -- I  
11 remember when Ms. Thomason was a page in this  
12 body, and I think former Representative Tucker  
13 back there in the back --

14 MS. THOMASON: I called him and asked him  
15 if he thought that we should make a trip to  
16 Columbia together, and so we're out  
17 reminiscing today.

18 SENATOR MARTIN: I want to welcome him  
19 and say and thank you for your service. This  
20 is a very important part of this Commission's  
21 work, and we really appreciate the time and  
22 effort that you put into this. And I don't  
23 know that everyone is aware, the public at  
24 large is aware that what exactly goes into the  
25 process. But it's been very helpful to have

1           you here today. And we start this week of  
2           hearings to set the process in motion, set the  
3           stage for what we're doing. And a lot of work  
4           has already gone into it. We appreciate that.

5           MS. THOMASON: Thank you. Thank you --

6           SENATOR MARTIN: Thank you for your  
7           service.

8           MS. THOMASON: -- for the work that you  
9           do. As a practicing attorney, I believe our  
10          judiciary has done nothing but get better each  
11          year. So thank you for all your service.

12          CHAIRMAN CLEMMONS: Thank you for your  
13          hard work and the work of your commissions  
14          around the state.

15          MS. THOMASON: Thank you.

16          CHAIRMAN CLEMMONS: Yes, Senator.

17          SENATOR MALLOY: I want to weigh in too.  
18          Weigh in my thanks for what they do. I have  
19          served on the Judicial Qualification for the  
20          Bar before, but I would caution, I wouldn't  
21          accept responsibility for being a gatekeeper  
22          for this group. And because I think that as  
23          we go forward, I do think and agree that as we  
24          go around and see places in other areas of the  
25          country, they applaud our system, borrowed one

1 of two -- one of two systems that we've ended  
2 up having. And so just in Washington, D.C.  
3 last week with a couple folks from the west  
4 coast applauding our system.

5 CHAIRMAN CLEMMONS: Thank you, Senator  
6 Malloy. Any other comments or questions?

7 (No response.)

8 CHAIRMAN CLEMMONS: Hearing none again,  
9 we want to thank our presenters and we want to  
10 thank the committees for the hard work of  
11 those committees and the staff of those  
12 committees that help us do our jobs. We are  
13 very grateful for them. Thank you.

14 MS. CRAWFORD: Mr. Chairman, at this time  
15 I would like offer and have made exhibits to  
16 the record the following, the Citizens  
17 Committee reports from the Low County Citizens  
18 Committee, the Midlands Citizens Committee,  
19 Pee Dee Citizens Committee, Piedmont Citizens  
20 Committee and Upstate Citizens Committee  
21 reports for the fall of 2015, as well as the  
22 South Carolina Bar's Judicial Qualifications  
23 Committee Report for the fall of 2015.

24 CHAIRMAN CLEMMONS: Do I hear any  
25 objections?

1 SENATOR MALLOY: Mr. Chair.

2 CHAIRMAN CLEMMONS: Yes, Senator Malloy.

3 SENATOR MALLOY: What's the custom with  
4 Exhibits in the past?

5 MS. CRAWFORD: We had made the Citizens  
6 Committee reports an exhibit in the past. I  
7 don't think we have officially entered the Bar  
8 report in the record as an exhibit in the  
9 past.

10 CHAIRMAN CLEMMONS: In saying that,  
11 however, staff has pointed out to me that the  
12 code requires that the Bar be required --

13 SENATOR MALLOY: The code says the  
14 Commission may receive --

15 CHAIRMAN CLEMMONS: Okay. I'm sorry.  
16 That's incorrect.

17 SENATOR MALLOY: And so I'm a bit  
18 concerned. And let me preface my comments by  
19 saying this. I am somewhat of a believer and  
20 pretty much clear that the Bar Association  
21 should be voluntary, not mandatory. I would  
22 say that as person that served on the Judicial  
23 Qualifications Committee with the Bar. It is  
24 my experience, obviously, that there is  
25 sometimes -- that the information is good.

1 I am concerned, though, to make it an  
2 exhibit and set a precedent in that way  
3 because it could open up Pandora's box. I  
4 think that even though the system looks good,  
5 there is a -- am I correct in saying that we  
6 got a lot of -- how do you say it -- anonymous  
7 information that we are considering, that we  
8 are having presented in their surveys and that  
9 kind of thing.

10 As you know -- as you know, we have to go  
11 through our processes now, and we are unable  
12 to validate a lot of the allegations. The one  
13 is like any other type of report. If you were  
14 having the treasurer's report, minutes from  
15 the prior meeting, the treasurer's report I  
16 see was taken information, but it's not made a  
17 part of the record until you can audit it.

18 And so I am not going to take a lot of  
19 time on this. I'm not going to vote today  
20 adding the exhibit, but I'm against it. Not  
21 to say that I don't think the process is good.  
22 I think the process is for information for us  
23 to consider. But as far as making it a part  
24 of our record, whenever we say that we may  
25 receive it, we're not required. I'm not

1 prepared to do that at this time, sir.

2 CHAIRMAN CLEMMONS: Thank you, Senator  
3 Malloy. For the Commission's edification,  
4 Section 2-19-25 of the code speaks to our  
5 report and the portion of that language that  
6 we're discussing this time states "The  
7 Commission may receive the Bar's assessment in  
8 that form and at that time it desires but  
9 shall attach the assessments to its findings  
10 of fact in such form as the Commission  
11 considers appropriate."

12 SENATOR MALLOY: So what that means, it  
13 means that we may receive it, but we don't  
14 have to. And that if we do, if we're able to  
15 make statements and comments about it, as to  
16 relative value you can give it or what we can  
17 agree when to receive.

18 CHAIRMAN CLEMMONS: Question.

19 MS. WALL: Mr. Chairman, but do I  
20 understand we have received it; is that  
21 correct?

22 CHAIRMAN CLEMMONS: That is correct.

23 SENATOR MALLOY: We haven't made it a  
24 part -- as an exhibit --

25 MS. WALL: No, making part of the record

1 I'm on the -- each of the members here have  
2 received it, so we --

3 CHAIRMAN CLEMMONS: "The Commission may  
4 receive the Bar's assessment in that form and  
5 at that time it desires" -- it has been  
6 received -- "but shall attach the assessments  
7 to its findings of fact in such form as the  
8 Commission considers appropriate." Questions?

9 DEAN WILCOX: When we talk about this,  
10 are we talking just the simple document which  
11 says "We find them qualified/unqualified," not  
12 the background for that, but there's the  
13 letter from the Bar which basically is the  
14 candidate's listing of qualified or  
15 unqualified. Is that where we're talking  
16 about putting it?

17 CHAIRMAN CLEMMONS: The report is on your  
18 laptop.

19 MR. WILCOX: But I'm looking at -- it  
20 looks like that is simply for each candidate  
21 says in the various categories are either  
22 qualified, unqualified or well-qualified. I  
23 don't see a background to that, other than  
24 their conclusions. But there's a difference  
25 to me of putting in the background versus

1 putting in just their conclusions.

2 CHAIRMAN CLEMMONS: The Bar report is all  
3 conclusive --

4 MR. WILCOX: Just the conclusions, okay.

5 CHAIRMAN CLEMMONS: Any other questions  
6 or comments?

7 SENATOR MALLOY: Let me be clear. So  
8 what I'm hearing now, want to be absolutely  
9 clear, all we are talking about is their  
10 conclusions as to what they come up with as to  
11 qualified, unqualified, well-qualified, that  
12 kind of thing.

13 CHAIRMAN CLEMMONS: That's correct. As  
14 to each of the non-evaluated criteria.

15 SENATOR MARTIN: Mr. Chairman.

16 CHAIRMAN CLEMMONS: Yes, sir.

17 SENATOR MARTIN: I've got no issues with  
18 it being an exhibit attached. Obviously, we  
19 do ask questions. And I appreciate, as I said  
20 earlier, the Bar's timely effort that they've  
21 expended on this. You know, frankly, the  
22 ballot box survey, I'm not all that impressed  
23 with the idea that folks can anonymously  
24 report things or say things on a ballot box  
25 survey. And then we got no basis on which to

1 act. I mean, it's -- you know, you'd like to  
2 think that every lawyer is an officer of the  
3 court and they're going to provide information  
4 to us that's factual and accurate, as they  
5 understand it.

6 But then again, we've seen ballot box  
7 surveys, statements that are very anonymous,  
8 that makes a very strong allegation about  
9 different candidates that we don't know how to  
10 take that. And so I think we need to be  
11 careful about maybe incorporating a ballot box  
12 survey statements in the report. But their  
13 findings, qualified versus well-qualified,  
14 that type thing, I am perfectly fine with.

15 And I think -- as a matter of fact, I  
16 intend to ask one of the candidates early on -  
17 - I've noticed a difference in qualified  
18 versus well-qualified on one of the  
19 candidates, and I think we need to ask that  
20 candidate why they feel that the Bar rated  
21 them as qualified, bare minimum so to speak,  
22 as opposed to well-qualified in these  
23 categories. I think that's a very appropriate  
24 thing for us to do.

25 It would have been nice if we would have

1 had some background for that, but we don't.  
2 And now we're just armed with whatever we've  
3 got. But I think as an appendix, a reference,  
4 I got no problem with that.

5 SENATOR MALLOY: Mr. Chairman.

6 CHAIRMAN CLEMMONS: Yes, sir.

7 SENATOR MALLOY: So is there any  
8 difference if we are going to accept that, I  
9 put value in qualified, well-qualified, if we  
10 say that ourselves, because the basis with  
11 that opinion is the through the information  
12 that they obtained. So my question would  
13 become then is that what's the difference in  
14 us saying it, than making it a part of the  
15 record.

16 SENATOR MARTIN: Right. Well, I think  
17 the public needs to know and our colleagues  
18 need to know. When this report is published,  
19 our colleagues need to know this went into the  
20 Commission's thinking. This was raised  
21 initially by the Bar. And I'll tell you, you  
22 know, when you look down at those ratings and  
23 you have a disparity there, that you've got  
24 the each Bar survey. And then you've got this  
25 disparity on the qualified versus unqualified

1 on a particular candidate, and we'll look at  
2 that as we go through it. But that does raise  
3 a concern with me, why their peers versus all  
4 these other candidates find them well-  
5 qualified, but in this particular case, there  
6 seems to be a lack there among those -- or  
7 after attributing to that particular candidate  
8 well-qualified.

9 SENATOR MALLOY: I would add to that that  
10 as we go forward, there is concern about this  
11 with the next group of trial lawyers -- Civil  
12 Justice Coalition.

13 SENATOR MARTIN: Right.

14 SENATOR MALLOY: And there are many  
15 members that are lawyers that believe that  
16 every organization is political, but we  
17 certainly believe that. And candidly, I have  
18 seen situations over the years where it was  
19 these decisions -- obviously, a lot of these  
20 surveys can be sometime given a problem. Law  
21 firms, for example, that may have a lot of  
22 lawyers -- you know, we've seen them sort of  
23 populate the boxes from time to time. And I  
24 understand that everyone has -- we've actually  
25 seen that before. So I don't want to give any

1 more credit than is necessary under those  
2 situations, because the one problem that we  
3 have is the -- in every organization that we  
4 have -- lawyer organizations is that fellow  
5 practitioners and those folks are -- are --  
6 are less included inclined to end up being  
7 involved. And we had from larger law firms  
8 that are involved in activities with the Bar  
9 and others. And obviously whenever they are  
10 politically involved -- I was on the Judicial  
11 Qualifications Committee with the Bar some  
12 time ago. I've seen that information come in.  
13 We received it then. But I also seen it come  
14 where they would be -- we had a situation that  
15 was several years ago where the Family Court  
16 practitioners in a certain area seemingly had  
17 gotten together and filled the box with  
18 certain things. I'm not sure what happened to  
19 those down the line. And so my first comments  
20 were made by the entire, I guess, report  
21 coming into the record. I can't discern the  
22 difference between whether or not them saying  
23 it, us saying it, and how it comes in to  
24 making it an exhibit, we can let it be known  
25 that that's what we consider as they are

1           testifying.

2                   CHAIRMAN CLEMMONS: Thank you, Mr.  
3 Malloy. Just to be clear for the public's  
4 sake, the code section that I read a part of,  
5 the sentence prior to that requires as  
6 follows. "The chairman of the Commission  
7 shall also request the South Carolina Bar to  
8 offer the Commission an assessment of each  
9 candidate's qualifications for the judgeship  
10 sought, and the date by which the assessment  
11 must be returned to the Commission. The  
12 assessment must specify the Bar's finding as  
13 to whether each candidate is qualified or  
14 unqualified for the judgeship sought and the  
15 reasons for that finding."

16                   And then it goes on to say, "The  
17 Commission may receive the Bar's assessment in  
18 that form and at that time it desires but  
19 shall attach" -- shall attach -- "the  
20 assessments to its findings of fact in such  
21 form as the Commission considers appropriate."  
22 So as to what other groups are invited to  
23 particulate in the process, I would remind us  
24 that this is not an invitation. This is a  
25 statutory requirement.

1                   SENATOR MALLOY: Mr. Chair, I think that  
2                   -- I think that a strict reading of this that  
3                   "you shall request." Doesn't say we shall  
4                   receive. And so it goes on to say that "the  
5                   Commission may receive." So the fact that the  
6                   chairman shall request, you know, we get that.  
7                   If the statute needs changing -- the statute  
8                   does not say the "Commission shall receive" or  
9                   "shall make an exhibit."

10                  CHAIRMAN CLEMMONS: Right. My point was  
11                  to your concern that this may open the door to  
12                  other groups. I don't see that as being the  
13                  case.

14                  SENATOR MALLOY: The end statement was  
15                  not necessarily by statute, though, because  
16                  the thing is is that we know how the lobbying  
17                  process works over here and if the Bar can do  
18                  it then why can't we do it? And we know where  
19                  to votes are when we start talking about Civil  
20                  Justice Coalition. And when it comes in I  
21                  vote "no." And then we'll probably have maybe  
22                  about 30 other folks going "yes" because  
23                  they're scared scorecard and that kind of  
24                  thing. So I'm just saying I'm going to make  
25                  sure that we keep this process less political

1 as possible. So if that's the case, then a  
2 statute can be amended for any other group  
3 with the influence of that group. I am just  
4 wanting to make sure that it's permissive;  
5 that's it's not required.

6 CHAIRMAN CLEMMONS: Thank you, sir.

7 MR. BANNISTER: Mr. Chairman.

8 CHAIRMAN CLEMMONS: Representative  
9 Bannister.

10 MR. BANNISTER: Perhaps we could address  
11 the Bar's finding on a candidate-by-candidate  
12 basis, how we want to include it in that  
13 candidate's report.

14 CHAIRMAN CLEMMONS: It is up to the  
15 Commission how it is included in the report.  
16 Are there other comments or concerns?

17 (No response.)

18 CHAIRMAN CLEMMONS: Hearing none, we have  
19 before us --

20 MS. WALL: I'm sorry, Mr. Chairman. So  
21 how are we going do this? We are going to  
22 make the decision after interviewing each  
23 candidate today?

24 CHAIRMAN CLEMMONS: Well, the chair is  
25 going to entertain a motion as to whether or

1 not this body wishes to accept the report in  
2 toto at this point in time and include it in  
3 the -- as part of the record.

4 MS. WALL: When you say accept the report  
5 in toto, are we talking about the Bar's only?  
6 Or the citizens report as well?

7 CHAIRMAN CLEMMONS: Well, we're asking if  
8 they both -- if there is a motion, the motion,  
9 I would suggest, would be that they both be  
10 included in the record.

11 MS. WALL: And what be included that  
12 we're now talking about is the categories of  
13 qualified, highly qualified and qualified; is  
14 that correct?

15 CHAIRMAN CLEMMONS: As to each candidate,  
16 as to evaluate the criteria.

17 MS. WALL: Thank you.

18 SENATOR MALLOY: I would move, Mr. Chair  
19 --

20 CHAIRMAN CLEMMONS: We could separate the  
21 question, if we like. In fact, I would  
22 suggest that we do that. The chair would  
23 entertain a motion that the Citizens Committee  
24 reports from the Low County Citizens  
25 Committee, Midlands Citizens Committee, Pee

1           Dee Citizens Committee, Piedmont Citizen  
2           Committee, and Upstate Citizens Committee for  
3           the fall of 2015 be admitted into the record  
4           for fall.

5           SENATOR MALLOY: Mr. Chair, I would move  
6           that we actually take those on a candidate-by-  
7           candidate basis to end up submitting the  
8           findings from the committees --

9           CHAIRMAN CLEMMONS: That is to the  
10          Citizens Committee reports, as well as the Bar  
11          reports, Senator?

12          SENATOR MALLOY: I can break it down. I  
13          can start with the Bar.

14          CHAIRMAN CLEMMONS: Well, I was asking  
15          for a motion, but Senator made a different  
16          motion, and I'm trying to understand the  
17          motion. So the motion is as to what reports,  
18          Senator?

19          SENATOR MARTIN: We've included the  
20          Citizens Committee; we just include it as an  
21          exhibit.

22          CHAIRMAN CLEMMONS: That's correct.

23          SENATOR MARTIN: I think that is the way  
24          to do it, because we start deciding which one  
25          we're going to enter in to which candidate,

1           then we've got to give some basis for that. I  
2           just -- it would take us forever to go through  
3           that. I think the thing to do is just attach  
4           it as a -- receive it, attach it.

5                     As we go through, I mentioned earlier,  
6           I'm just going to ask a couple questions  
7           about, you know, why a particular candidate --  
8           why you feel that you didn't get well-  
9           qualified, this, this and this from the Bar.  
10          Which I think is a legitimate question when  
11          others got well-qualified, you know, the same  
12          group.

13                    But beyond that, I'm not giving much  
14          credence to it. I think public --  
15          particularly with the statute being the way it  
16          is, we just need to list it as an exhibit on  
17          everybody.

18                    SENATOR MALLOY: On the findings.

19                    SENATOR MARTIN: Yeah.

20                    SENATOR MALLOY: On the findings --

21                    SENATOR MARTIN: That's all we're talking

22                    --

23                    SENATOR MALLOY: As opposed to -- as  
24          opposed to -- as opposed to their report to us

25                    --

1                   SENATOR MARTIN: As included as an  
2                   appendix to our report.

3                   CHAIRMAN CLEMMONS: One tool in the tool  
4                   chest.

5                   SENATOR CAMPSSEN: Mr. Chairman.

6                   CHAIRMAN CLEMMONS: Yes, sir, Senator.

7                   SENATOR CAMPSSEN: I would also -- well  
8                   first of all, I would echo the Senator from  
9                   Darlington's earlier remarks about us having  
10                  the best judicial selection process in the  
11                  state, and that's what holds a degree of  
12                  deliberation and input from practitioners of  
13                  the law. And you can't take politics out of  
14                  electing judges. People say, you know, y'all  
15                  are not doing it with the politics. Well,  
16                  you're going to have politics. The question  
17                  is whose politics are you going to have.

18                  You can have one person's, the  
19                  governor's. You can have popular elections.  
20                  You can have the legislature. You're going to  
21                  have politics. But I do think that we have a  
22                  more robust vetting process. And it's not  
23                  just about us. It's about members of the  
24                  General Assembly who can review this same  
25                  process, the product of this same process and

1 also can talk to us, members of the Commission  
2 who is going to spend a week with these  
3 candidates.

4 And so having said all that, I think it  
5 is important that in most states, it's a pure  
6 popular election. And in our system, the  
7 Citizens Committee is really a process whereby  
8 you get feedback, input from citizens who in  
9 most states are electing judges based upon ads  
10 that they're running and donations they're  
11 getting from people who want to perhaps even  
12 influence their decisions.

13 And it's important for us to be aware of  
14 that, because I do think that this is a  
15 superior process. But part of that superior  
16 process is getting that input from the public,  
17 who are not members of the Bar. After all, in  
18 almost every other state, they're the ones who  
19 make the decisions and unfortunately too often  
20 it is about, you know, on the basis of  
21 advertising or the day of the election you  
22 made a decision based while you can be talking  
23 to your neighbor or something, as opposed to a  
24 more thorough vetting process.

25 And so this is an important aspect of it.

1 I mean, we can discount it as much as we want.  
2 I think it's an important part to preserve  
3 really our system even and to preserve even  
4 support for it. So I would encourage that we  
5 accept it and we give it the weight that we  
6 choose individually and discount that which  
7 you find lacking in credible evidence. And  
8 that would be my -- those are comments.

9 CHAIRMAN CLEMMONS: Thank you very much,  
10 Senator Campsen. I would -- in light of the  
11 fact that Citizens Committee reports have  
12 always been attached to our findings or have  
13 always been a part of our record, I should  
14 say, and the fact the Citizens Committee  
15 really is -- they are a part of this process  
16 just as much as our interviewing attorneys are  
17 a part of this process.

18 And while their findings are not binding  
19 upon us, it's the role that the citizens play  
20 in this process is important in my mind. And  
21 given our history and the work that they would  
22 do, I would move that your question be  
23 divided, that we divide the question, so that  
24 we consider whether or not -- I think your  
25 motion was to --

1                   SENATOR MALLOY:  If you would withhold it  
2                   --

3                   CHAIRMAN CLEMMONS:  Okay.  Thank you.

4                   SENATOR MALLOY:  So I think that -- I  
5                   think that I'm trying to say the same thing  
6                   that the Senator from Charleston is saying,  
7                   and I think that we all agree as to the  
8                   process.  And we -- we think that there's  
9                   value in each of the processes that have been  
10                  brought before us.

11                  The question becomes is that if it's done  
12                  in such a way that we are not giving their  
13                  process a seal of approval as to their  
14                  finding, it's just part of what we are  
15                  considering --

16                  CHAIRMAN CLEMMONS:  Correct.

17                  SENATOR MALLOY:  -- then I think that  
18                  we're okay.  But I think that what happens is  
19                  that I don't want to end up validating that  
20                  entire process.  I think that is for our  
21                  information to consider.  As long as it's  
22                  there for that purpose, then I think we're  
23                  okay.  And as long as we're doing the complete  
24                  conclusion but not afterward process because  
25                  we did not get a chance to review that.

1                   CHAIRMAN CLEMMONS: Yes, sir. That's  
2 where we are. That is fair, so --

3                   SENATOR MALLOY: I withdraw my motion in  
4 light of the discussion and comments. And  
5 thank you all for the tolerance.

6                   CHAIRMAN CLEMMONS: Okay. Thank you very  
7 much.

8                   DEAN WILCOX: Do we need a motion?

9                   CHAIRMAN CLEMMONS: We do need a motion.

10                  DEAN WILCOX: Mr. Chairman, I could move  
11 that we accept the reports of the Citizens  
12 Committee and the Bar Committee for  
13 information of this panel and attach to the  
14 Bar report.

15                  CHAIRMAN CLEMMONS: And that would be  
16 with regard to all of the Citizens Committees  
17 and --

18                  DEAN WILCOX: Yes, all of the Citizens  
19 Committees --

20                  CHAIRMAN CLEMMONS: Attach to the  
21 Judicial Qualifications Committee report for  
22 fall 2015.

23                  DEAN WILCOX: Thank you. Yes.

24                  SENATOR MALLOY: The conclusions.

25                  DEAN WILCOX: The conclusions, yes. The

1 reports indicating their conclusions as  
2 qualified, unqualified or well-qualified.

3 SENATOR MARTIN: Second.

4 CHAIRMAN CLEMMONS: We have a motion by  
5 Dean Wilcox, seconded by Senator Martin. Any  
6 discussion?

7 (No response.)

8 CHAIRMAN CLEMMONS: Hearing none, those  
9 in favor say aye.

10 BOARD MEMBERS: Aye.

11 CHAIRMAN CLEMMONS: Those opposed?

12 (No response.)

13 CHAIRMAN CLEMMONS: And the ayes have it.

14 [EXHIBIT NO. 1 - Lowcountry Citizens  
15 Committee Report, Midlands Citizens Committee  
16 Report, Pee Dee Citizens Committee Report,  
17 Piedmont Citizens Committee Report, Upstate  
18 Citizens Committee Report for Fall Screening  
19 2015.]

20 [EXHIBIT NO. 2 - The South Carolina Bar's  
21 Judicial Qualifications Committee Reports for  
22 Fall Screening 2015.]

23 CHAIRMAN CLEMMONS: All right, ladies and  
24 gentlemen, that's all the business we have now  
25 for the Commission. We'll now proceed into

1 the candidate portion of the hearing.

2 SENATOR MARTIN: We need a small break.

3 CHAIRMAN CLEMMONS: A five minute break  
4 has been requested.

5 (Off the record.)

6 CHAIRMAN CLEMMONS: We are back on the  
7 record, ladies and gentlemen. The Judicial  
8 Merit Selection Commission is called pursuant  
9 to Chapter 19 of Title 2, South Carolina Code  
10 of Law is requiring the review of candidates  
11 for a judicial office. The function of the  
12 Commission is not to choose between  
13 candidates, but rather to declare whether or  
14 not the candidates who offer for positions on  
15 the bench, in our judgment, are qualified to  
16 fill the positions of the seat.

17 The inquiry we undertake is a thorough  
18 one. It is centered around the Commission's  
19 nine evaluative criteria and it involves a  
20 complete personal and professional background  
21 check as to each candidate. These public  
22 hearings are convened for the purpose of  
23 screening candidates.

24 Today we will screen one open seat for  
25 the South Carolina Supreme Court, one seat for

1 reelection on the South Carolina Court of  
2 Appeals, 11 seats for reelection, and one open  
3 seat on the Circuit Court, 19 seats for  
4 reelection and two open seats on the Family  
5 Court, one seat for reelection on the  
6 Administrative Law Court, four seats for  
7 reelection and two open seats from Master-in-  
8 Equity and five retired judges. The chair  
9 recognizes Attorney Jamey Goldin.

10 MR. GOLDIN: Thank you, Mr. Chairman.

11 CHAIRMAN CLEMMONS: Judge Anderson.

12 JUDGE ANDERSON: Yes, sir.

13 CHAIRMAN CLEMMONS: It's good to have you  
14 with us today, sir.

15 JUDGE ANDERSON: Thank you.

16 CHAIRMAN CLEMMONS: Now before us, the  
17 Honorable Ralph King Anderson, seeking Seat 2  
18 of the Supreme Court. Judge Anderson, if you  
19 would raise your right hand, please.

20 (The judge is sworn in.)

21 CHAIRMAN CLEMMONS: Thank you very much.  
22 Judge Anderson, have you had an opportunity to  
23 review your personal data questionnaire?

24 JUDGE ANDERSON: Not recently, but I -- I  
25 -- I wrote it and nothing's changed, if that's

1 what you're going to ask me.

2 CHAIRMAN CLEMMONS: Well, I'm going to  
3 ask you if it is correct as you wrote it.

4 JUDGE ANDERSON: I believe it is.

5 CHAIRMAN CLEMMONS: Does anything need to  
6 be changed?

7 JUDGE ANDERSON: No, sir.

8 CHAIRMAN CLEMMONS: Thank you. Do you  
9 object to our making this summary and any  
10 amendments part of the record today?

11 JUDGE ANDERSON: No, sir.

12 CHAIRMAN CLEMMONS: It will be done at  
13 this point.

14 [EXHIBIT NO. 3 - Judicial Merit Selection  
15 Committee Personal Data Questionnaire for The  
16 Honorable Ralph King Anderson, III, dated July  
17 25th, 2015, admitted.]

18 [EXHIBIT NO. 4 - Judicial Merit Selection  
19 Committee Sworn Statement of The Honorable  
20 Ralph King Anderson, III, dated July 27th,  
21 2015, admitted.]

22 CHAIRMAN CLEMMONS: The Judicial Merit  
23 Selection Commission has thoroughly  
24 investigated your qualifications for the  
25 bench. Our inquiry has focused on the nine

1           evaluative criteria and has included a ballot  
2           box survey, thorough study of your application  
3           materials, verification of your compliance  
4           with state ethics laws, search of newspaper  
5           articles in which your name appears, a study  
6           of previous screenings, a check for economic  
7           conflicts of interest. We've received no  
8           affidavits filed opposition to your election.  
9           No witnesses are present to testify. Do you  
10          have a brief opening statement you'd like to  
11          make at this time?

12                    JUDGE ANDERSON: No, sir. I'll hear from  
13                    y'all.

14                    CHAIRMAN CLEMMONS: Thank you. We  
15                    appreciate that. If you would please answer  
16                    Counsel Goldin's questions.

17                                    EXAMINATION

18                    (By Mr. Goldin)

19                                    MR. GOLDIN: Thank you, Mr. Chairman.  
20                    One other procedural matter, I note for the  
21                    record that based on the testimony contained  
22                    in your PDQ, which has been included just now  
23                    into the record, that you meet the statutory  
24                    requirements for this position regarding age,  
25                    residence and years of practice.

1                    Judge Anderson, why do you now want to  
2                    serve as a Supreme Court justice? And how do  
3                    you feel your legal and professional  
4                    experience thus far will assist you becoming  
5                    an effective judge?

6                    JUDGE ANDERSON: All right. That's a  
7                    compound question.

8                    MR. GOLDIN: I can break it up, if you'd  
9                    like.

10                  JUDGE ANDERSON: No, I'll start. Why do  
11                  I want, I'll start with that. You asked  
12                  "want." I think probably for most every judge  
13                  in South Carolina would want to be on the  
14                  Supreme Court. So when I think about that, I  
15                  recognize -- did I recognize the true  
16                  privilege that I'm asking that y'all grant me,  
17                  to be on the Supreme Court of South Carolina.

18                  I will tell you that my desire to want to  
19                  be on the Supreme Court has taken an  
20                  interesting journey because when I was at the  
21                  Attorney General's Office, as I rose through  
22                  the ranks and I became chief trial lawyer, one  
23                  of them, I really enjoyed that. And when got  
24                  to Administrative Law Court, I wasn't sure I  
25                  I wanted to do Administrative Law because I

1 loved being a trial lawyer so much.

2 When I got elected to Administrative Law  
3 Court and assumed the judgeship, our court  
4 didn't have a significant appellate practice.  
5 It had -- we had appellate practice. But over  
6 the years, as we've gotten more and more  
7 jurisdiction in the appellate arena, and  
8 matter of fact we're now around 70 to 80  
9 percent of appellate now. And also our --  
10 even our contested cases involve a -- I would  
11 characterize it as mirroring appellate review  
12 because any time we have a complex appellate  
13 case, contested case, there's almost always a  
14 lot of legal issues, especially in the area of  
15 statutory construction.

16 So the long and short of all that is,  
17 I've really developed a love for appellate law  
18 and writing briefs -- I mean for reviewing  
19 briefs and writing decisions in that regard.  
20 I hope and think I do it -- do it well, and  
21 therein lies my desire to be on the Supreme  
22 Court.

23 MR. GOLDIN: Thank you. Are there any  
24 areas, including subjective areas of the law,  
25 that you would need to additionally prepare

1 for in order to serve as a judge on the  
2 Supreme Court? And how would you go about  
3 handling that preparation?

4 JUDGE ANDERSON: Well, I hope after all  
5 the years of being in the Attorney General's  
6 Office and being a judge for 20 years, I'm  
7 fairly well prepared to be a judge with the  
8 Supreme Court now. And I say that because  
9 even at the Administrative Law Court level, it  
10 is not unfrequent that we get cases that --  
11 I'll tell people, "I didn't know we had that  
12 jurisdiction," or "I didn't know we were going  
13 to hear -- we heard those types of cases."

14 So in being a judge, you're going to --  
15 it's not unusual to get cases for which you're  
16 not familiar with the jurisdiction. And when  
17 you get that jurisdiction, you -- you'll  
18 review the law, you review the pleadings that  
19 are represented and you prepare yourself to  
20 hear that case and the law involving that  
21 case.

22 So I believe I'm prepared if there are --  
23 there are obviously going to be areas of law  
24 that I am not familiar with, and there always  
25 will be areas of law that judges aren't

1 familiar with when they hear the -- hear  
2 cases.

3 MR. GOLDIN: Thank you, Judge Anderson.  
4 Although you addressed this in your sworn  
5 affidavit, could you please explain to the  
6 members of the Commission what you think is  
7 the appropriate demeanor for a judge?

8 JUDGE ANDERSON: Well, I think looking at  
9 the rules governing our -- our ethics, they --  
10 they set forth that a judge should maintain  
11 order and decorum. And then shortly  
12 thereafter, the rules set forth, a judge must  
13 be patient, courteous and dignified. And I  
14 think that those encapsulate the -- the  
15 demeanor that a judge should have.

16 And it also, I think interestingly, it  
17 reflects the -- the competing natures of  
18 sometimes what a judge needs to have, and that  
19 is, to maintain order and decorum, you can't  
20 always be the sweetest person on the face of  
21 this earth. It depends on who's in front of  
22 you. But I think all those criterias you  
23 should strive for. And sometimes you may have  
24 to be a little stern in order to maintain your  
25 order and decorum. But you should always be

1 striving to be patient, courteous and  
2 dignified and create an atmosphere in the  
3 court setting that is respectful for all the  
4 litigants and -- and the attorneys.

5 MR. GOLDIN: Thank you. Judge Anderson,  
6 the Commission received 425 ballot box surveys  
7 regarding you, 65 additional comments. The  
8 ballot box surveys were overwhelmingly  
9 positive, with numerous respondents remarking  
10 that you are an excellent candidate for this  
11 seat.

12 However, ten of the written comments  
13 expressed some concern, and almost all of  
14 those comments centered on your alleged  
15 involvement in the race last year for the  
16 Administrative Law Court seat, once held by  
17 Judge Carolyn Matthews, that indicated you  
18 might have played a role in it. How do you  
19 respond to that?

20 JUDGE ANDERSON: I didn't get involved in  
21 that campaign. I came over to the General  
22 Assembly during that time frame as chief judge  
23 and -- and also let House members and Senators  
24 know that I was interested in this position,  
25 but I think the members of this committee

1 would know if I had been involved in that  
2 campaign and I wasn't.

3 MR. GOLDIN: Thank you. One other  
4 concern was expressed that you were too  
5 deferential or that you gave preferential  
6 treatment to certain agencies, state agencies,  
7 certain litigants. How would you respond to  
8 that?

9 JUDGE ANDERSON: Simply that I don't. If  
10 you look at the cases that are finally going  
11 to the appellate venue, I think, I'm pretty  
12 evenly matched on where I decide sometimes for  
13 the agency and sometimes against it. I -- I  
14 believe very strongly, and especially from  
15 what I hear from attorneys, that I've got a  
16 pretty good reputation of calling it as I see  
17 it.

18 MR. GOLDIN: Thank you. One final  
19 comment indicated a concern in your dealings  
20 with other judges at the Administrative Law  
21 Court. Do you have any response to that?

22 JUDGE ANDERSON: Think my court would  
23 probably be an excellent example of judges who  
24 get along. We have very good collegiality  
25 among our court.

1 MR. GOLDIN: Thank you. I have some  
2 housekeeping issues to address. Have you  
3 sought or received a pledge of any legislator  
4 prior to this date?

5 JUDGE ANDERSON: No, sir.

6 MR. GOLDIN: Have you sought or have you  
7 been offered a conditional pledge of support  
8 of any legislator pending the outcome of this  
9 screening?

10 JUDGE ANDERSON: No, sir.

11 MR. GOLDIN: Have you asked any third  
12 parties to contact members of the General  
13 Assembly on your behalf?

14 JUDGE ANDERSON: No, sir. Well, I  
15 mentioned to them, when the time frame comes,  
16 that -- that -- that they can do so. I have  
17 mentioned to some people I would like to do it  
18 then, but no, not at this point.

19 MR. GOLDIN: Thank you. Have you  
20 contacted any members of the Commission?

21 JUDGE ANDERSON: No, sir.

22 MR. GOLDIN: Do you understand that you  
23 are prohibited from seeking a pledge or  
24 commitment until 48 hours after the formal  
25 release of the Commission's report?

1 JUDGE ANDERSON: Yes, sir.

2 MR. GOLDIN: Have you reviewed the  
3 Commission's guidelines on pledging?

4 JUDGE ANDERSON: Yes, sir.

5 MR. GOLDIN: As a follow-up, are you  
6 aware of the penalties for violating the  
7 pledging rules? That is, it is a misdemeanor,  
8 and upon conviction, the violator must be  
9 fined not more than \$1,000 or imprisoned for  
10 more than 90 days?

11 JUDGE ANDERSON: Yes, sir.

12 MR. GOLDIN: Thank you. I would note  
13 that the Midlands Citizens Committee found  
14 Judge Anderson to be qualified in the  
15 evaluative criteria of constitutional  
16 qualifications, physical health and mental  
17 stability. The Committee found him well-  
18 qualified in the evaluative criteria of  
19 ethical fitness, professional and academic  
20 ability, character, reputation, experience and  
21 judicial temper.

22 The Committee stated, in summary, Judge  
23 Anderson possess all the traits desirable in a  
24 Supreme Court justice, and therefore is an  
25 outstanding candidate.

1 I would just also note for the record  
2 that any concerns raised during the  
3 investigation of Judge Anderson were  
4 incorporated into my questioning of him today.  
5 And Mr. Chairman, I have no further questions.

6 CHAIRMAN CLEMMONS: Thank you very much.  
7 Yes, Senator.

8 SENATOR MARTIN: I have a question for  
9 Judge Anderson.

10 EXAMINATION

11 (By Senator Martin)

12 SENATOR MARTIN: Judge, welcome.

13 JUDGE ANDERSON: Thank you.

14 SENATOR MARTIN: Glad to have you today.  
15 Known you for a long time. Appreciate your  
16 service on the Administrative Law Court and  
17 your willingness to continue to serve. I'm  
18 going to ask a question, or a couple questions  
19 of all our candidates for the Supreme Court  
20 and the Appellate Court regarding their views  
21 on public policy, particularly as it relates  
22 to the separation of powers between the three  
23 branches of government.

24 We see cases from time to time that draw  
25 out how the court would view that and, you

1 know, don't think it appropriate to ask you  
2 about specific cases, or any of the candidates  
3 about specific cases. But do believe it  
4 appropriate to ask you about your philosophy  
5 as it relates to the separation of powers. In  
6 what respect -- how do you view the role of  
7 the Supreme Court, the position that you seek,  
8 regarding who sets public policy in South  
9 Carolina, in the context -- of the broader  
10 context of the separation of powers?

11 JUDGE ANDERSON: I'll start with all  
12 judges are governed by Article 1, Section 8.  
13 I think I can even recite it. It says "And  
14 the government of this state, the legislative,  
15 executive and judicial powers of the  
16 government shall be forever separate and  
17 distinct from each other." That's pretty  
18 strong.

19 Then you get beyond -- that section goes  
20 on further and it says "No person or persons  
21 exercising the function of one of said  
22 departments shall assume or discharge the  
23 duties of any other." So I'll start by  
24 telling you I'm going to follow the  
25 constitution.

1           Now, when it comes to the public policy,  
2           that's a nebulous area. I think I've -- I  
3           think back, there -- there was a -- a recent  
4           case involving an at-will doctrine and the  
5           implementation of public policy in that case.  
6           And in that case, the court -- it said several  
7           things that might not -- it says some language  
8           I -- I might have some concern with. But they  
9           started it out by stating that the primary  
10          source of the declaration of public policy of  
11          this state is the General Assembly.

12          We ought to say that the courts assume  
13          the prerogative only in the absence of --  
14          absence of a legislative declaration. And  
15          then where I'm going on that particular  
16          language is if it further set forth that the  
17          courts exercised restraint when undertaking  
18          the interesting language of more of an inquiry  
19          of what constitutes public policy.

20          There is one word in all of that that I  
21          think is the most -- or the most important,  
22          and the word is "restraint." And that's  
23          something that has -- that has been going on -  
24          - I'm not even going to say throughout the  
25          history of this state. You go back to Marbury

1           versus Madison, even back then, the first  
2           significant case of our court. The court was  
3           concerned with the restraint that was going to  
4           be exercised by the court, as whether or not  
5           they were going -- or the court was going to  
6           grant a habeas corpus of its original  
7           jurisdiction. They chose not to, because it  
8           exercised restraint.

9           But all of us could say we exercise  
10          restraint. I think the determination of  
11          whether we exercise restraint is revealed,  
12          especially if it's a judge that has been  
13          sitting a while without looking at the -- at  
14          the history. Does that judge have a history  
15          of being someone who has a tendency to invoke  
16          their own policy to -- to see -- to push the  
17          envelope on statutory construction? Or -- or  
18          seek to have a -- to accomplish their -- their  
19          will in a case rather than follow the law, I -  
20          - I think my reputation is very sound in that  
21          regard that I don't.

22          Matter of fact, I think our court is  
23          excellent grounds for -- for testing judges in  
24          that regard because our court significantly  
25          deals with statutory construction issues.

1                   SENATOR MARTIN: It does. But we talk  
2 about public policy -- I don't mean to cut you  
3 off --

4                   JUDGE ANDERSON: Okay.

5                   SENATOR MARTIN: But when we talk about  
6 public policy, if the constitution, for  
7 example, vests with the General Assembly  
8 specific duty regarding an area of public  
9 policy, is it ever appropriate for the court  
10 to assume for itself that area of public  
11 policy?

12                  JUDGE ANDERSON: Well, the courts have  
13 said that it is at times. But that's what I  
14 was getting at. The -- the court said that --  
15 that they should -- the court should exercise  
16 restraint before doing so. I will say that in  
17 -- in the government of this state, the  
18 legislature has the power to implement the  
19 laws, to implement policy, unless that --  
20 those laws violating the federal or state  
21 constitution. And it's stated otherwise that  
22 unless a legislative actions violate the  
23 constitution, the legislative actions are  
24 clear.

25                  SENATOR MARTIN: In presuming the

1 constitution.

2 JUDGE ANDERSON: Yes, sir. The law of --  
3 of constitutionality sets forth that every  
4 presumption shall be indulged in favor of the  
5 constitution -- constitutionality and no  
6 statute shall be overruled unless the  
7 constitution is clear beyond a reasonable  
8 doubt.

9 SENATOR MARTIN: Let me ask you this  
10 question. And, of course, I'm not asking you  
11 to pre-judge anything. But as a member of the  
12 court, say you were elected, and you came  
13 across a decision which the court that a  
14 previous case had been decided -- say, for  
15 instance, four to one vote -- I'm just going  
16 to use that as a -- this is a hypothetical.  
17 And it had been decided -- or maybe even a  
18 three-two, but it was a split decision in the  
19 court. Stare decisis the idea of, you know,  
20 following the previous actions of the court,  
21 seems to oblige the court to those previous  
22 decisions.

23 In the case -- in a particular case,  
24 however, if you believed that the court erred  
25 in its ruling, how would you -- how would you

1 view such a subsequent case that's brought in  
2 front of the court with stare decisis or the  
3 previous decision of the court prevail? Or  
4 would you act upon what you believed to be the  
5 constitutional role of the court as you  
6 understand it in finding for the proper manner  
7 in which the judiciary should act?

8 JUDGE ANDERSON: Our court's founded on  
9 common law for which stare decisis doctrines  
10 about the -- but I think other than the stare  
11 decisis doctrine, a court should not reverse  
12 its previous rulings, unless a judge believes  
13 that there is a significant error that has  
14 occurred in the past. But under the  
15 hypothetical that you gave me, if indeed a  
16 judge comes to the determination that the  
17 previous decision was wrong, I think it would  
18 be erroneous for the judge to follow that  
19 doctrine, simply just the basis of the  
20 doctrine itself.

21 SENATOR MARTIN: Based on previous  
22 rulings.

23 JUDGE ANDERSON: Yes, stare decisis  
24 doctrine. That's one of the interesting  
25 things I've always thought were not bad for

1           appellate courts. It depends on the need for  
2           it and the significance of the case. But  
3           there's -- there's even an example of the  
4           Administrative Law Court that is of recent  
5           origin where the court had previously held  
6           that -- that inmates did not have a liberty  
7           interest in unearned good time credits.  
8           Excuse me, the courts that they did have a  
9           liberty interest in unearned good time  
10          credits. And Justice Toal wrote a very good  
11          dissent on that issue.

12                 After the legislature passed a -- a law  
13          regarding that, it came back up before the  
14          Supreme Court again under Howard versus  
15          Department of Corrections and the Supreme  
16          Court reversed its previous decision. And I  
17          think they were correct in doing so. So I  
18          think that's -- that's an example even in  
19          Administrative Law arena where the stare  
20          decisis didn't hold because the previous  
21          decision wasn't correct. I don't even know  
22          the content of the court changed in that  
23          instance. I think in that instance it was the  
24          court itself realizing that it was a mistake.

25                         SENATOR MARTIN: Thank you very much.

1 CHAIRMAN CLEMMONS: Senator Campsen.

2 EXAMINATION

3 (By Senator Campsen)

4 SENATOR CAMPSEN: Thank you, Judge, for  
5 your service and your willingness to serve in  
6 another role. I, likewise, have some  
7 questions that I want to ask all the Supreme  
8 Court candidates, dealing with probing the  
9 limits and parameters in the extent of  
10 judicial power in your mind. Could you tell  
11 me what principles of construction of  
12 constitutional principle or provision, I mean,  
13 you would employ in construing whether a case  
14 before you has implicated a constitutional  
15 provision, what are the principles of  
16 constitution constructional would you employ  
17 in construing a section of the constitution  
18 that's before you?

19 JUDGE ANDERSON: I'm not quite sure what  
20 you're asking me on that. It is my  
21 understanding that when a -- when an issue  
22 comes before me -- and we're going to set  
23 forth the standard earlier. If it is a  
24 question regarding, let's say a statute and  
25 its constitutionality, the -- the review is

1           that every court should indulge every -- how  
2           did I word it a minute ago? The quote that to  
3           indulge every potential view in favor of  
4           constitutionality, and the court should not  
5           declare a statute of unconstitutional, unless  
6           it is -- it's repugnance to the constitution  
7           is clear beyond reasonable doubt. But that's  
8           the standard there.

9           Whether you engage in the -- the  
10          termination of constitution -- an issue is  
11          constitutional or not, it's a case by the case  
12          basis of deciding whether that case needs to  
13          employ a constitutional analysis. And I think  
14          we go back to what I said earlier, is courts  
15          need to exercise restraint before they launch  
16          down certain paths. But -- but they still  
17          have the obligation to do so, if it -- if it -  
18          - if it's laid before them and -- and it's  
19          legally something that is an issue that they  
20          should decide. Hopefully I covered that.

21          SENATOR CAMPSEN: Do you think the  
22          General Assembly or the court has the power to  
23          issue a writ of mandamus against the General  
24          Assembly or a particular legislator or a  
25          constitutional office?

1 JUDGE ANDERSON: I don't know if I should  
2 probably answer that. I think -- how about I  
3 respond generally.

4 SENATOR CAMPSEN: You can respond any way  
5 you'd like.

6 JUDGE ANDERSON: Well, I want to answer  
7 your question.

8 SENATOR CAMPSEN: No, no. I'm serious.  
9 You can respond any way you like.

10 JUDGE ANDERSON: I think the proper  
11 response is that we exist under a government  
12 of -- or three branches of government. And  
13 each branch of -- of our government should be  
14 respected. And the legislature has its  
15 authority to make laws. The executive branch  
16 exists to implement those laws, and the court  
17 exists solely to determine whether or not  
18 those laws are proper -- to declare whether  
19 the laws are proper.

20 And in carrying out that duty, I just  
21 can't imagine there would be a -- a call for  
22 writ of mandamus -- is the writ of mandamus,  
23 you were asking about?

24 MS. CRAWFORD: Yes.

25 JUDGE ANDERSON: The laws -- the case law

1 sets forth clearly, the -- the court should  
2 respect the other branches of government. And  
3 so, I guess, I had to say that I would -- I  
4 would be surprised if there was ever something  
5 that would call for that, but I can't say  
6 that, you know, unequivocally that there are  
7 no factual situations that that could ever  
8 occur. It would depend on the case that was  
9 before the court.

10 SENATOR CAMPSSEN: That's all I have, Mr.  
11 Chairman.

12 CHAIRMAN CLEMMONS: Thank you, Senator  
13 Campsen. Yes, Mr. Hitchcock.

14 EXAMINATION

15 (By Mr. Hitchcock)

16 MR. HITCHCOCK: Judge Anderson, I  
17 appreciate your answers on the proper standard  
18 for reviewing the constitutionality of Acts  
19 passed by the General Assembly. And the one,  
20 somewhat of a follow up, I think, to both  
21 Senator Campsen and Senator Martin's question  
22 would be that the -- in determining whether or  
23 not a statute is unconstitutional, the court,  
24 in essence, makes a -- or the judgment of  
25 constitutionality of statute. The court, in

1 essence, makes a declaration in that regard  
2 usually in the form of some type of  
3 declaratory judgment.

4 My question would be, and maybe a little  
5 bit more philosophical, is when you -- it  
6 would seem that the -- if you're looking at a  
7 potential conflict between the branches of  
8 government, especially the General Assembly  
9 and the court, that that might come into play  
10 more likely when the court is asked to  
11 determine whether or not the General Assembly  
12 is failing to fulfill a duty that it's  
13 constitutionally required to do so.

14 So it's really your thoughts on whether  
15 or not you would see the court's position in  
16 that instance as simply declaring whether or  
17 not the General Assembly has met its duty to  
18 perform a particular function described by the  
19 constitution. Or does the court have a  
20 greater duty in ensuring that that  
21 constitutional duty is fulfilled.

22 JUDGE ANDERSON: I think I can answer  
23 that question more directly, because when you  
24 say philosophical, I don't know if that's as  
25 philosophical as you may think. There's case

1 law -- I -- I can't put my finger on it, but  
2 it sets forth that judges are to -- or the  
3 Supreme Court is to avoid political questions  
4 in exercising its authority and -- and not  
5 exercise its authority in -- in situations  
6 that will bring it in conflict with an equal  
7 branch -- a branch of equal authority.

8 So I think that -- from what I heard your  
9 question, I think that that would be my  
10 response, unless I'm missing any nuances you  
11 were asking about.

12 MR. HITCHCOCK: Well, in I guess the --  
13 if the court is faced with an instance where  
14 it finds that the General Assembly has failed  
15 in a particular constitutional duty, I guess  
16 how far does the court, by way of remedy or by  
17 way of prescription, what is the limits on the  
18 court's ability, I guess, to force the General  
19 Assembly into a remedy, or to prescribe a  
20 remedy for the General Assembly?

21 JUDGE ANDERSON: Well, if a court only  
22 has the authority under that situation to  
23 exercise its contempt authority and holding an  
24 equal branch of government in contempt would  
25 be something that I did not think any court

1 would ever want to do. Again, I don't think  
2 as a candidate for Supreme Court I should -- I  
3 -- I should probably say that nothing is ever  
4 unequivocal because I think a court should --  
5 a judge should maintain an ability to hear  
6 cases and decide them on what has been  
7 presented. But that would be something that I  
8 just don't envision happening.

9 MR. HITCHCOCK: Thank you, sir.

10 CHAIRMAN CLEMMONS: Thank you. Are there  
11 any more questions? Dean Wilcox.

12 EXAMINATION

13 (By Dean Wilcox)

14 DEAN WILCOX: Judge, let me add my thanks  
15 to you for both your service and your  
16 willingness to offer for this position. I  
17 think the Supreme Court offers a special set  
18 of circumstances because it is the highest  
19 court. And I want to go back a little bit and  
20 ask about maybe how you had dealt with some  
21 issues in your experience as a judge.

22 Certainly a judge's personal background  
23 and experiences can never be fully removed  
24 from a judge's consideration in a particular  
25 case in front of the court. But as a judge

1           who has decided cases for a number of years  
2           now, how have you ensured that the decision  
3           you render is an appropriate legal decision  
4           and does not unduly reflect your personal  
5           viewpoint on a matter?

6           JUDGE ANDERSON: Well, I think a judge  
7           should be open-minded when they go into the  
8           courtroom. And I've often heard that at judge  
9           shouldn't pre-judge matters. That's an  
10          interesting comment, though, when I hear that  
11          because especially in the appellate arena, but  
12          also in the contested case arena when a case  
13          comes before you, you often read all the pre-  
14          trial information; you've developed an  
15          opinion. But I think I've passed all the  
16          tests in that regard. I've gone into court  
17          plenty of time and thought I was going to go  
18          one way and heard the case and -- and based on  
19          the law and the facts, I went the other way.

20          Now, you asked about the history. I've  
21          got -- I could give you an example of several  
22          cases that I think that I reviewed that  
23          reflects my history of being -- of restraining  
24          a decision process. But you were asking more  
25          of -- of reflecting --

1 DEAN WILCOX: I was not asking for a  
2 specific example, Judge. I was just simply --  
3 giving that you have been a judge now for a  
4 number of years, I'm sure that that issue has  
5 come up from time to time where you look at  
6 something and you may see your personal view  
7 of what the outcome would be might be  
8 different from what you view as the -- what  
9 you have to rule.

10 JUDGE ANDERSON: There have been times  
11 when I went against what I thought was my  
12 personal view, and I -- and I followed the  
13 law. I think that's what we're all required  
14 to do. But I -- the -- the only response I  
15 could tell you to that, without giving you  
16 specifics, is I'm aware of -- of the tendency  
17 for us to want to invoke our view in areas,  
18 but I've -- I avoid that.

19 I've even told individuals -- they ask me  
20 what type of judge do you want on your court.  
21 I tell them I really don't care if the judge  
22 has a liberal viewpoint or conservative  
23 viewpoint. I simply want a judge who will A,  
24 follow the law and B, has the scholastic and  
25 the -- and common sense to do the job well.

1           If you are getting judges that have that  
2           mentality, they'll do a very good job. And I  
3           have taken that approach myself.

4                   CHAIRMAN CLEMMONS: Representative Mack.

5                           EXAMINATION

6           (By Representative Mack)

7                   REPRESENTATIVE MACK: Thank you, Mr.  
8           Chairman. I too appreciate your service and  
9           your continuing wanting to serve. We're going  
10          to have a very tough decision with regards to  
11          this particular Supreme Court seat with  
12          regards to quality people, including yourself  
13          in line for it. What would you say that you  
14          bring to the table that's unique in terms of  
15          not only your experience, background, your  
16          value system and sort of the innate things  
17          that you would just lay out to this committee  
18          that would make us lean your way?

19                   JUDGE ANDERSON: Well, I've had a lot of  
20          experience; let's start with that. At the  
21          Attorney General's Office I was a trial  
22          lawyer. I moved up the ranks to try the major  
23          cases of the Attorney General's Office, both  
24          in the criminal and in civil areas. I -- I  
25          participated with Ed Evans at trials in civil

1 matters at the AG's Office too. And I've --  
2 I've also had experience with representing  
3 state agencies in a lot of different regards  
4 at the Attorney General's Office. I -- I -- I  
5 did medical board prosecution, engineering and  
6 land surveying, board prosecution. But on the  
7 other hand, I -- I was an employee grievance  
8 attorney, which meant I acted in somewhat of a  
9 role of a -- as a judge, with the committee  
10 being the jury and I just ruled on the  
11 evidence. I've been the governor's  
12 extradition hearing officer. I know I'm  
13 leaving off some -- some things.

14 But I've also -- I've been a -- a judge  
15 for 20 years in a court that practices complex  
16 jurisdiction, both appellate and in trial  
17 court now. And I've taken on the complex  
18 cases for that -- for our court for quite a  
19 while. And not since I've been a chief judge;  
20 it's -- it happened well before that, that --  
21 that I -- Judge Kittrell began assigning me  
22 some of the most difficult cases with the  
23 court. And normally when our court would get  
24 new jurisdiction and I would -- for instance,  
25 I'll give you examples of when we had the

1 inmate jurisdiction, I did the first 100 cases  
2 in -- in that regard. So I have developed a  
3 body of law for our court.

4 The same thing when we got jurisdiction  
5 in other areas. In the office of motor  
6 vehicle hearings, we did the same thing. I  
7 was the first judge to do en banc decision for  
8 our court. So I've had a history of taking on  
9 complex cases and hopefully doing an excellent  
10 job.

11 And I also will tell you that looking at  
12 my life experiences, I certainly had a father  
13 who taught me ethics. My father is one of the  
14 most ethical men I've ever known. And I had a  
15 father who certainly did not coddle his son.  
16 For those of you who know him, you would know  
17 that -- I use to laugh when I tell people  
18 about if I wanted to take a nap during the  
19 day, I literally would have to crawl up under  
20 the bed because if my dad saw me taking a nap,  
21 he'd come home and find something for me to  
22 do.

23 But -- and I -- and along those lines,  
24 even when I was in high school, I had -- my  
25 father helped me get jobs, but they were very

1 tough jobs. I spent one summer when they  
2 thought there was going to be a coal shortage,  
3 I worked for the school district and I spent  
4 part of that summer shoveling coal from one  
5 end of a coal bin to another in hundred-and-  
6 something degree temperatures.

7 But I -- I also have a mother who was one  
8 of the most loving individuals that I've ever  
9 known, who's -- who taught me that you go  
10 through difficulties in life, you still keep  
11 loving your fellow man. But I've also gone  
12 through -- you -- you asked a question, I've  
13 gone through paralysis and I've learned the  
14 difficulty of -- of facing obstacles and the  
15 difficulty of depending on having individuals  
16 get you up in the morning and help you get in  
17 the bed at night. I've learned a lot from --  
18 from the individuals that I've interacted with  
19 during that time frame, since I've been  
20 paralyzed. I got to know people that I never  
21 would have gotten to know.

22 I've had people look at me and think that  
23 there's no way I could have accomplished the  
24 things that I did when I started in the  
25 Attorney General's Office. I don't think

1 anybody thought I could be a good trial  
2 lawyer. It's not that I'm in a wheelchair.  
3 I'm a quadriplegic. I couldn't -- they didn't  
4 think I could handle exhibits and things like  
5 that, but I've -- I've worked hard to prove  
6 them wrong. So I've had a lot of unique life  
7 experiences that I think that give me view  
8 points and common sense that other individuals  
9 may not be able to obtain.

10 REPRESENTATIVE MACK: Thank you.

11 SENATOR CAMPSSEN: Mr. Chairman.

12 CHAIRMAN CLEMMONS: Senator Campsen.

13 RE-EXAMINATION

14 (By Senator Campsen)

15 SENATOR CAMPSSEN: Thank you. Thank you,  
16 Judge. One other question. Does advocacy for  
17 a particular outcome on the part of a judge, a  
18 sitting judge on the Supreme Court, the  
19 particular outcome that actually comes to the  
20 court subsequently as an actual case or  
21 controversy before you, does that constitute -  
22 - I'm not talking about legal representation;  
23 I'm talking about advocacy for an outcome that  
24 a party before you is seeking, that you have  
25 to rule upon -- does previous advocacy for a

1 particular outcome constitute grounds for  
2 recusal in your mind?

3 JUDGE ANDERSON: Well, the standard is a  
4 judge should recuse himself if his  
5 impartiality might be reasonably questioned.  
6 And I would think, if you've advocated the  
7 previous point, that that would be absolutely  
8 that you should recuse yourself.

9 SENATOR CAMPSER: Thank you.

10 SENATOR MALLOY: Mr. Chairman.

11 CHAIRMAN CLEMMONS: Senator Malloy is  
12 recognized.

13 EXAMINATION

14 (By Senator Malloy)

15 SENATOR MALLOY: Thank you, Mr. Chairman.  
16 Judge Anderson, thank you for being here. I  
17 would have to report to the committee that I  
18 knew his father and had a chance to appear  
19 before him. I'm old enough to be able to do  
20 that. And happy to report he didn't coddle  
21 anybody, not just you, other people that were  
22 in the court as well. And for those that  
23 appeared in front of him would have been well-  
24 served to carry their Webster's dictionary and  
25 their Black's Law Dictionary whenever they

1 appeared before him.

2 I appreciate your willingness to share  
3 your story. I had asked this question in my  
4 brief appearance on the Commission times  
5 before. For those of us that practice law and  
6 for those of us that are serving, and the  
7 citizens here in the state, what we have is is  
8 that a number of cases that are three-two  
9 decisions, it seems as though that we don't  
10 have a clear blueprint as to which to follow a  
11 lot of times, and we are seeing is that, as  
12 one jurist stated in one of his matters, that  
13 his dissent has become the law on more than  
14 one occasion.

15 So I'm asking you your viewpoint. And  
16 this is a little bit speculation, is that do  
17 you see that you are able to help this court  
18 to develop a blueprint -- in developing  
19 blueprints so that we can have something to  
20 follow, so that we will continue to have these  
21 -- if we will continue to have these three-two  
22 decisions, as we move forward in the state.

23 JUDGE ANDERSON: Are you asking, do you  
24 think I can help avoid the three-two  
25 decisions? Or that --

1                   SENATOR MALLOY: It's probably not a  
2                   specific question. I don't know if it's  
3                   totally within your purview. I just want you  
4                   to comment on it and to see your viewpoint of  
5                   it.

6                   JUDGE ANDERSON: I think that -- that  
7                   upon hearing a case, if I'm right on the law,  
8                   based on my research and my viewpoint, that I  
9                   hope I can leave the court, to follow that  
10                  viewpoint that and take it in the right  
11                  direction. But I -- I do agree with the  
12                  previous justice or -- that you -- you'd refer  
13                  to. I don't know who that person was. But I  
14                  don't think the dissents are always bad.

15                  But I -- I do think that -- that it is  
16                  good for the court to strive to create a more  
17                  unified viewpoint on the law, to guide  
18                  lawyers. Because when you've got those three-  
19                  two dissensions out there, as you well know,  
20                  you're a great trial lawyer, it's obviously  
21                  that that issue is not settled well in South  
22                  Carolina. And we've seen it before, where  
23                  there were three-two decisions.

24                  I've got the unique situation of having a  
25                  case that I would give an example of for my

1 restraint, if y'all want to hear me discuss  
2 that. But in Kiawah, the -- they had a three-  
3 two decision and then they had -- that  
4 reversed me. They had a re-hearing and a  
5 three-two decision that availed me. And then  
6 I think the first time in the history of this  
7 state, yeah, another re-hearing, a three-two  
8 decision that reversed me, so --

9 SENATOR CAMPSEN: You've got another case  
10 coming your way, Judge.

11 SENATOR MALLOY: There is the point  
12 because what we have is is that in my  
13 observations of being here for a period of  
14 time and getting a chance to observe the court  
15 with a lot of hats. The Supreme Court is --  
16 it's a bit of a pressure cooker. That's my  
17 words, not anybody else's. And in the Court  
18 of Appeals, they hear cases of panels. And,  
19 you know, a lot of us like to see -- a lot of  
20 people a lot of times like to see unanimous  
21 opinions.

22 JUDGE ANDERSON: I'm agreeing with you on  
23 that.

24 SENATOR MALLOY: And so the question  
25 becomes is that being under what circumstances

1 do you see in light of the fact that we've  
2 been having three-twos and we're having these  
3 -- if we were looking to a unanimous, what  
4 times would there be dissent, of course? Or  
5 would you take the time to write a dissent?  
6 Understand that you're in a pressure cooker  
7 and you have all these cases.

8 JUDGE ANDERSON: I just don't think you  
9 should write a dissent. And there's --  
10 there's many ways to write a dissent.

11 SENATOR MALLOY: Sure.

12 JUDGE ANDERSON: If your issue is just  
13 the facts of the case, you could write a very  
14 simple dissent and express that. I think when  
15 we're discussing dissents that have -- that  
16 are fully developed, that express specific  
17 disagreement with the court, those -- dissents  
18 in that should be rendered by a judge when you  
19 believe that the direction of the court is --  
20 is being -- is going the wrong way. And --  
21 but I agree with you fully.

22 But I think it behooves the court system  
23 to have more either unanimous or -- or four-  
24 one. The -- the more unanimity that a court  
25 can display, the better for settling that

1 issue in the future. But that -- at the same  
2 time, a -- a judge can't compromise their  
3 belief about what the law is. But he  
4 certainly should be respectful of the other  
5 judges and listen to what they've got to say  
6 before coming to a strident decision.

7 SENATOR MALLOY: And I am going to jump  
8 just a little bit. I got part of the  
9 conversation that you were having with Senator  
10 from Pickens regarding stare decisis. And so  
11 the question becomes is that, you know, we  
12 have unsettled questions. There's an  
13 unsettled question in South Carolina. And  
14 it's something that comes before the court.  
15 Do you have a viewpoint on whether or not that  
16 you settle it whenever you know that it's not  
17 a complete settlement? Or you think that it -  
18 - that you're going to wait on another case to  
19 come along for it to -- for it to come with a  
20 particular complete settlement?

21 JUDGE ANDERSON: I tell you, at least in  
22 the Administrative Law Court, I've made this  
23 comment before that the court should be like  
24 well-behaved children and they should respond  
25 to that, which has been presented to them. I

1 -- I don't think the court should be too  
2 proactive in trying to settle an issue that is  
3 not really before them. I think that's what  
4 you're asking.

5 SENATOR MALLOY: So I think what you're  
6 saying is, is that it should be settled right,  
7 as opposed to just settling.

8 JUDGE ANDERSON: Correct. And, you know,  
9 that comment about the well-behaved children,  
10 if -- if you -- if you reach out and try to  
11 settle something that's really not before you,  
12 then oftentimes you don't have a fully-  
13 developed record for that issue. And I think  
14 it's better for the court system to have a  
15 fully-developed record before you seek to  
16 settle a matter that is before you.

17 And also, if you look at our system of  
18 stare decisis, to go back to that, the way  
19 that stare decisis works and the theory behind  
20 it is that at a certain point in time, enough  
21 -- enough cases have been heard by which the  
22 court believes that it can reach a decision  
23 upon an issue. So the whole system of stare  
24 decisis was not based on just hearing one case  
25 and deciding, that's how the court's going to

1 rule from now on. It was based on development  
2 of the law over time and hearing numerous  
3 cases, so that the court can reflect upon  
4 facts and the application of the law and those  
5 facts.

6 SENATOR MALLOY: Thank you.

7 CHAIRMAN CLEMMONS: Thank you very much.  
8 Are there any other questions?

9 (No response.)

10 EXAMINATION

11 (By Chairman Clemmons)

12 CHAIRMAN CLEMMONS: I just have a brief  
13 comment and a couple of questions myself,  
14 Judge. First of all, I am certainly not the  
15 level of litigator that Judge -- Senator  
16 Malloy is.

17 JUDGE ANDERSON: Already moving him up.

18 SENATOR MALLOY: I don't know that judge  
19 is a move-up; I'm sorry. That's why I'm here.

20 CHAIRMAN CLEMMONS: We considered -- that  
21 means you can't be senator.

22 SENATOR CAMPSEN: Depends on how they  
23 interpret separation of powers.

24 CHAIRMAN CLEMMONS: But I did have the  
25 privilege of practicing in front of your

1 father, Judge Anderson. And I have to say  
2 that in terms of work ethic and intellect, I  
3 have -- I know a lot of smart judges and I  
4 know a lot of hard-working judges, but none of  
5 them surpass your father. I have a great deal  
6 of respect for him. And I am certain that you  
7 were taught well with regard to work ethic,  
8 because I've seen your kind of work. And we  
9 are grateful -- I am personally grateful for  
10 that, for the way that you lead the  
11 Administrative Law Court.

12 I have a question for you with regard to  
13 the criminal side of the question. There has  
14 been some debate in recent years over who gets  
15 control of the criminal docket. And I was  
16 wondering if you had -- if you would share  
17 your insights on that issue.

18 JUDGE ANDERSON: Historically, it has  
19 been the solicitors. I recognize that the  
20 Supreme Court has recently issued a decision,  
21 not recently, it was about five years ago --  
22 that set forth that it was going to take over  
23 that authority. I don't think that I could  
24 properly -- could recognize that -- the  
25 history. I can recognize the Supreme Court --

1 but also recognizing that that is a potential  
2 matter that could come before me as a justice,  
3 I'm not -- not sure I should respond any  
4 further on that.

5 CHAIRMAN CLEMMONS: And I'm curious with  
6 regard to your preparation for the test that  
7 staff administers. Can you tell us how you  
8 prepare for that test and who might assist you  
9 in preparation, your preparation?

10 JUDGE ANDERSON: That's pretty simple. I  
11 prepared for it on my own. Staff even  
12 volunteered to help me. And I told them no, I  
13 thought that it was improper for a -- to  
14 utilize staff in preparing for the test. So I  
15 -- I did it all on my own.

16 CHAIRMAN CLEMMONS: Excellent. Thank you  
17 very much, Judge. I believe that we have one  
18 follow-up question. Representative Bannister.

19 EXAMINATION

20 (By Representative Bannister)

21 REPRESENTATIVE BANNISTER: You were asked  
22 a question about the control of the dockets in  
23 criminal cases. And I was reading the  
24 separation of powers section in the  
25 constitution you referenced. And the next

1 section, Section 9, guarantees "every person  
2 shall have speedy remedy therein for wrongs  
3 sustained." Just kind of a softball, have you  
4 done anything in your role as lead of the  
5 Administrative Law Court to speed up the  
6 decision-making process in your court? And do  
7 you see that as a proper function for the  
8 Supreme Court, to try to make the decision,  
9 the final decisions, happen faster for the  
10 litigants?

11 JUDGE ANDERSON: Yes and yes. The -- the  
12 Administrative Law Court, I don't have so much  
13 control over the other judges. So I -- part  
14 of that would be to A, lead by example and B,  
15 encourage the judges. And I do that often.  
16 And by -- by "often," I don't think it's  
17 needed often. It is not infrequent that I  
18 encourage a judge to -- to get an order out  
19 that's getting too old.

20 One of the ways that I've helped with my  
21 docket is I take on a lot more work than --  
22 than our previous chief judge. And nothing  
23 against him, it's just I take very little  
24 vacation; I work long hours. So I've taken on  
25 extra duties, in order to ensure that my court

1 runs efficiently. Did I answer that?

2 REPRESENTATIVE BANNISTER: You did.

3 Thank you.

4 CHAIRMAN CLEMMONS: Another final  
5 question.

6 SENATOR MARTIN: Final comment, really.  
7 We're going to wind you up. Since the Senator  
8 of Darlington failed to disclose his  
9 relationship, knowledge, personal level of you  
10 and your dad, I just want to disclose to the  
11 public that I actually served with his dad in  
12 the State House and thoroughly, thoroughly  
13 enjoyed that experience. And one of the  
14 funniest speeches I wish we could go back and  
15 pull it off of from archive, one of the  
16 funniest speeches. He had great intellect; he  
17 used some words occasionally that I had to go  
18 to the dictionary and look up.

19 But he gave a speech one day. The Rules  
20 Committee came out -- this was '84 -- '83,  
21 '84, somewhere along in there, over 30 years  
22 ago. I'll never forget. Rules Committee came  
23 out with this resolution. They were going to  
24 give the Rules Committee chairman a little bit  
25 more authority. And Ralph King, as we called

1 him, didn't take too kindly to that. And he  
2 got up and gave them a humourous speech on the  
3 House floor. I mean, he had the House rolling  
4 in stitches. And the proponents of that  
5 resolution very quickly just withdrew it. I  
6 mean, he killed them on the floor with his  
7 humor. And it was one of the funniest  
8 speeches I've ever heard, very effective, very  
9 effective.

10 JUDGE ANDERSON: I've heard a lot of  
11 people tell me when they meet my father and  
12 talk to him, that they were surprised that he  
13 had a sense of humor.

14 SENATOR MALLOY: In furtherance of his  
15 sense of humor, Mr. Chairman, I would say too  
16 that -- of course, not in the last couple  
17 years since I've spent more time being over  
18 here -- but Judge Ralph King had been known to  
19 send a case or two to me, and I appreciate it.

20 JUDGE ANDERSON: Shows his wisdom.

21 CHAIRMAN CLEMMONS: Ms. Wall?

22 MS. WALL: Thank you. Finally, Judge, I  
23 don't happen to know you, but I do know your  
24 father. And I had the pleasure of serving  
25 with him for years and years. We did ethics

1 together. We would put on a skit and for  
2 bridge the gap for many years. And he was a  
3 very fine and intelligent person and is.

4 CHAIRMAN CLEMMONS: Thank you. Any  
5 further comments or questions for Judge  
6 Anderson?

7 (No response.)

8 CHAIRMAN CLEMMONS: Judge Anderson, we  
9 want to thank you very much for your service  
10 to South Carolina and leading the  
11 Administrative Law Court. We want to thank  
12 you for offering yourself for this very  
13 important position on the South Carolina  
14 Supreme Court.

15 That concludes this portion of our  
16 screening process for you, Judge Anderson. As  
17 you know, the record will remain open until  
18 the report is published and you may be called  
19 back at such time if the need should arise.  
20 I'll remind you of the 48-hour rule and ask  
21 that you be mindful of that. Should anyone  
22 inquire with you whether they may or may not  
23 advocate for you, in the event that you are  
24 screened out, as you've described it, remind  
25 them of the 48-hour rule.

1 JUDGE ANDERSON: Yes, sir.

2 CHAIRMAN CLEMMONS: I thank you for  
3 offering and we all thank you for your service  
4 to South Carolina.

5 JUDGE ANDERSON: Thank y'all for hearing  
6 me.

7 (Candidate excused.)

8 (Off the record.)

9 CHAIRMAN CLEMMONS: Ladies and gentlemen,  
10 we are back on the record. We have before us  
11 the Honorable John Cannon Few, who seeks  
12 nomination to Seat 2 of the Supreme Court.  
13 Judge Few, it's great to have you here with  
14 us.

15 JUDGE FEW: Thanks. It is an honor to be  
16 here. I really appreciate it.

17 CHAIRMAN CLEMMONS: Thank you. We're  
18 honored you offered yourself. Let's start by  
19 swearing you in, if you would. Please raise  
20 your right hand.

21 (The witness is sworn in.)

22 CHAIRMAN CLEMMONS: Have you had an  
23 opportunity to review your personal data  
24 questionnaire?

25 JUDGE FEW: Actually I've reviewed it not

1 in the last couple days, but when I filed it,  
2 certainly.

3 CHAIRMAN CLEMMONS: And is it correct --

4 JUDGE FEW: It is.

5 CHAIRMAN CLEMMONS: -- in its current  
6 form?

7 JUDGE FEW: Yes, sir.

8 CHAIRMAN CLEMMONS: Do you need to change  
9 anything in it?

10 JUDGE FEW: No, sir.

11 CHAIRMAN CLEMMONS: Very well. Do you  
12 object to our making your PDQ a part of the  
13 record of your sworn testimony today?

14 JUDGE FEW: No objection to that.

15 CHAIRMAN CLEMMONS: Are there any  
16 objections by members?

17 (No response.)

18 CHAIRMAN CLEMMONS: Hearing none, so  
19 ordered.

20 [EXHIBIT NO. 5 - Judicial Merit Selection  
21 Committee Personal Data Questionnaire for The  
22 Honorable John Cannon Few, dated August 6th,  
23 2015, admitted.]

24 CHAIRMAN CLEMMONS: The Judicial Merit  
25 Selection Commission, Judge Few, has

1 thoroughly reviewed your qualifications for  
2 the bench. Our inquiry has focused on the  
3 nine evaluative criteria and has included a  
4 ballot box survey, a thorough study of your  
5 application materials, verification of your  
6 compliance with state ethics laws, a search of  
7 newspaper articles in which your name appears,  
8 a study of previous screenings, and a check  
9 for economic conflicts of interest. We have  
10 received no affidavits filed in opposition to  
11 your election and there are no witnesses here  
12 today to testify. Do you have, Judge Few, a  
13 brief opening statement you'd like to share  
14 with us?

15 JUDGE FEW: I just want -- you gave it to  
16 me really, just to say what an honor it is to  
17 be here. There might be some things I would  
18 want to add at the end, but I suspect that  
19 most of your questions will cover the things  
20 that I want to say anyway.

21 CHAIRMAN CLEMMONS: Excellent. Thank  
22 you. We would ask that you'd turn your  
23 attention to Mr. Dennis and answer any  
24 questions he may have.

25 EXAMINATION

1 (By Mr. Dennis)

2 MR. DENNIS: Afternoon, Judge Few. You  
3 also should have in front of you a sworn  
4 statement that provided detailed answers over  
5 30 questions regarding judicial conduct,  
6 statutory qualifications, office  
7 administration and temperament. Do you see  
8 that?

9 JUDGE FEW: Yes, I do.

10 MR. DENNIS: Are there any amendments you  
11 would like to make to that document?

12 JUDGE FEW: No, sir.

13 MR. DENNIS: Mr. Chairman, I would ask  
14 that Judge Few's sworn statement be entered in  
15 as an exhibit at this time.

16 CHAIRMAN CLEMMONS: Is there any  
17 objection?

18 (No response.)

19 CHAIRMAN CLEMMONS: Hearing none, so  
20 ordered.

21 [EXHIBIT NO. 6 - Judicial Merit Selection  
22 Committee Sworn Statement of The Honorable  
23 John Cannon Few, dated August 5th, 2015,  
24 admitted.]

25 MR. DENNIS: Mr. Chairman, I also note

1 for the record that based on the testimony  
2 contained, the candidate's PDQ, which has been  
3 included in the record, with the candidate's  
4 consent, Judge Few meets the statutory  
5 requirements for this position regarding age,  
6 residence and years of practice.

7 Judge Few, can you explain the Commission  
8 why you would like to serve as a Supreme Court  
9 justice? And how do you feel your  
10 professional experience thus far will assist  
11 you in doing so?

12 JUDGE FEW: Well, I think that each of us  
13 here is here because we have accepted our  
14 vision of our own responsibility to make the  
15 judicial system in South Carolina do its part  
16 to play its proper role in the administration  
17 of government and in the -- and -- and in our  
18 society.

19 I have kept that in the forefront of my  
20 mind as I've gone through each step of my  
21 career so far, from private practice to the  
22 Circuit Bench, to the Court of Appeals. I  
23 believe that moving to the Supreme Court is a  
24 -- is a step that gives me the best chance to  
25 continue to play my part in making sure that

1           our judicial system operates the way that it  
2           should.

3                   And in terms of my experience, I have  
4           lived my entire career, which is now little  
5           bit over 27 years, in this forum, whether it  
6           be in an office, meeting with a client who has  
7           a legal problem that needs to be litigated,  
8           whether it be in a courtroom, trying a case on  
9           behalf of a client, or in a courtroom,  
10          presiding over a case that -- in the Circuit  
11          Court or at the Court of Appeals.

12                   And I think that through those 27 years,  
13          I have put together a breadth of experience  
14          that really equips me well to meet the  
15          challenges that I would face at the Supreme  
16          Court.

17                   MR. DENNIS: Thank you, Judge. Would you  
18          mind suggesting if there are any subjective  
19          areas of the law that you would need  
20          additional preparation for in order to serve  
21          on the Supreme Court? And if so, how would  
22          you handle that preparation?

23                   JUDGE FEW: Well, as a Court of Appeals  
24          judge, and it is also true -- will be true on  
25          the Supreme Court, there are so many areas of

1 law that -- that we deal with. And -- and  
2 frankly, there are some of -- there are some  
3 with which I am more familiar than others.  
4 For example, if I deal with a constitutional  
5 question in a criminal case, I feel like I'm  
6 ready to do that the minute I see the issue  
7 before me.

8 On the other hand, if I get a workers'  
9 compensation case in front of me, it takes me  
10 a long time to satisfy myself that I have in -  
11 - in my consciousness the breadth of knowledge  
12 about the law to understand the practical  
13 context in which those cases arise and the  
14 legal principles that should be applied to  
15 them to resolve them.

16 So even today as I sit on the Court of  
17 Appeals, there are subject matters, such as  
18 workers' comp I mentioned, family law is  
19 another one, administrative law is a third  
20 one, where I really have to work extra hard  
21 when the case comes up, in order to be ready.

22 But I also pay attention to on a more  
23 general level, trying to stay up -- up to  
24 speed on these issues. I go to workers'  
25 compensation meetings. I have spoken at

1 workers' compensation meetings where I have  
2 tried to -- to -- to try to share not only my  
3 insights about how the system works, but also  
4 to share my questions about how the system  
5 works. So these type things prepare me to  
6 handle areas of law that I'm -- that I did not  
7 grow up in.

8 But -- and -- and I will say this, it's  
9 kind of scary sometimes to sit there in front  
10 of the -- the necessity of filing a public  
11 opinion on an issue of law, like workers'  
12 compensation or family law or probate law  
13 where I didn't have a real breadth of  
14 experience in. I -- I just make absolutely  
15 certain that before I let go of that thing, I  
16 have studied it as hard as I possibly can, to  
17 make sure that it is going to be a useful  
18 addition to the law and that it is a correct  
19 decision.

20 MR. DENNIS: Judge, would you mind  
21 explaining to the Commission members what you  
22 feel the appropriate demeanor for a Supreme  
23 Court justice is?

24 JUDGE FEW: Well, any judge should be  
25 patient and courteous, should respect the

1 rights of the litigants who come before the  
2 court, should understand and keep in the  
3 forefront of the judge's consciousness the  
4 reality that the lawyer is there with a  
5 responsibility to speak on behalf of that  
6 client and to uphold that client's interest.

7 On -- on -- at the same time, the -- I  
8 believe a judge needs to bring with him or her  
9 to a hearing the -- the -- a little bit of  
10 fire and a little bit of passion about making  
11 sure that the judge seeks out -- seeks out and  
12 -- and grasps the understanding that is  
13 necessary to resolve the case.

14 Sometimes those might seem to be in  
15 conflict, and -- and -- but I think that the  
16 judge's responsibility is to -- is to do  
17 everything possible to make sure that when a  
18 client or a lawyer leaves the courtroom, the  
19 client and the lawyer believe that they have  
20 been listened to and that the judge was trying  
21 very hard to understand their position and  
22 understand how the law applies to their  
23 situation.

24 You know, the -- the question is very  
25 broad. I could -- I could go on. But

1           courteous, respectful are -- are the two  
2           guiding principles that should govern the way  
3           a Supreme Court justice would handle himself  
4           or herself.

5           MR. DENNIS: Thank you, Judge. The  
6           Commission received some 787 ballot box  
7           surveys regarding you. Eighty-seven of these  
8           included individualized comments. Many of  
9           those were positive, containing good comments  
10          as relating to your knowledge, your ability,  
11          your general academic standing as a judge and  
12          a lawyer.

13          Twenty-one of the written comments  
14          expressed some level of concern. Some of  
15          these related to your temperament. What  
16          response would you offer to those concerns  
17          about your temperament? And I know you  
18          touched on this a little in your earlier  
19          response.

20          JUDGE FEW: I probably anticipated that  
21          when I answered the first question. But I --  
22          I believe that I conduct myself appropriately  
23          in court. However, it is as, if not more  
24          important that the lawyer feel I conducted  
25          myself appropriately. And so I listen very

1           carefully to these -- these thoughts -- these  
2           -- and these comments and I have -- I -- I try  
3           -- when I'm -- when I'm preparing myself to go  
4           into court, I try to think through how the  
5           individual situation will present itself in  
6           terms of my temperament and how I -- how I am  
7           to handle it.

8           I -- one of the -- as -- as we all know,  
9           the Code of Judicial Conduct is based in a  
10          large part on the idea of perception. So I  
11          could be perfect in my own mind, perfect in  
12          the eyes of an objective observer. But if I'm  
13          perceived by someone who's in court, whether  
14          that it be a member of the press or a litigant  
15          or anybody as -- as not being in order, then I  
16          need to listen to that and I need to work to  
17          try to improve, and I do.

18          I -- I'm -- I'm -- I am conscious that I  
19          -- I have a style of -- of thinking about law  
20          that is very active and very interactive. And  
21          by active, I don't mean active in the sense of  
22          making law. I mean active in the sense of  
23          seeking out understanding. And in court,  
24          those -- many of you have appeared in front of  
25          me in court, and you know that I have

1 questions. And that question and answer can  
2 get -- it -- it -- we just know how court  
3 works. Question and answer can get  
4 interesting. It can get hot. I mean, you  
5 know, we're known in South Carolina as being a  
6 hot court and --

7 SENATOR MALLOY: That's the best word  
8 that you could come up with is hot?

9 JUDGE FEW: So it -- it's very important  
10 to me that I portray myself as best I can in  
11 terms of my temperament. And so I realize  
12 that there is -- that is a concern for me.  
13 And there are -- there have been lawyers who  
14 have left my courtroom, wondering whether or  
15 not I was behaving with proper temperament.  
16 And I'm -- I -- I try very hard not to let  
17 that happen.

18 MR. DENNIS: Judge, also turning to your  
19 ballot box survey responses, you are aware  
20 that several of them contained suggestions  
21 that your personal life may not have been in  
22 the order that some would like to see it in.  
23 Could you respond to the Commission and  
24 suggest whether or not those concerns that are  
25 raised in ballot box surveys are legitimate or

1 not?

2 JUDGE FEW: Well, I will, yes, sir. And  
3 -- and I will start where I left off last --  
4 in the last question with -- with perception.  
5 And I might behave perfectly in a social  
6 setting, which I think I do, but if the  
7 perception is otherwise, then that's a concern  
8 that I owe it to you and I owe it to the -- to  
9 the rest of the state, to try to address.

10 And I -- I try on a daily basis to  
11 conduct myself not only in a courtroom, but  
12 outside the courtroom, not only in Columbia,  
13 but when I'm in Greenville, when I'm in other  
14 parts of the state, in a manner that would --  
15 that complies with the Code of Judicial  
16 Conduct. And not only that, goes beyond that,  
17 so that if any one of you were to see me, or  
18 any other citizen were to see me anywhere, you  
19 -- you would take pride in the fact that I'm  
20 conducting myself appropriately.

21 This question that has been raised, as --  
22 as you all know, is one that I have addressed  
23 in this forum before. The only thing I know  
24 to do is to continue to strive to behave  
25 myself appropriately, which I do, and try to

1 keep those perceptions from arising, which I  
2 do.

3 MR. DENNIS: Thank you, Judge Few. I've  
4 just got some housekeeping questions I'm going  
5 to run through with you real quickly. Have  
6 you sought or received a pledge of any  
7 legislator prior to this date?

8 JUDGE FEW: No, sir.

9 MR. DENNIS: Have you sought or have you  
10 been offered a conditional pledge of support  
11 of any legislator pending the outcome of your  
12 screening?

13 JUDGE FEW: No, sir.

14 MR. DENNIS: Have you asked any third  
15 parties to contact members of the General  
16 Assembly on your behalf?

17 JUDGE FEW: No, sir.

18 MR. DENNIS: Are you aware of anyone  
19 attempting to intervene in any part of the  
20 process on your behalf?

21 JUDGE FEW: No, sir.

22 MR. DENNIS: Have you contacted any  
23 members of this Commission?

24 JUDGE FEW: I have been in contact with  
25 members of the Commission on a casual basis.

1 MR. DENNIS: Concerning this race?

2 JUDGE FEW: No, sir.

3 MR. DENNIS: Do you understand that you  
4 are prohibited from seeking -- excuse me. Do  
5 you understand that you are prohibited from  
6 seeking a pledge or commitment till 48 hours  
7 after the formal release of the Commission's  
8 report?

9 JUDGE FEW: Yes, sir, I'm aware of that.

10 MR. DENNIS: Have you reviewed the  
11 Commission's guidelines on pledging?

12 JUDGE FEW: I have.

13 MR. DENNIS: And as a follow-up, are you  
14 aware of the penalties for violating the  
15 pledging rules? That is, it is a misdemeanor,  
16 and upon conviction, the violator must be  
17 fined not more than \$1,000 or imprisoned for  
18 more than 90 days?

19 JUDGE FEW: Yes, sir.

20 MR. DENNIS: I would note one final note,  
21 that the Upstate Citizens Committee found  
22 Judge Few qualified in the evaluative criteria  
23 of constitutional qualifications, physical  
24 health and mental stability. The Committee  
25 found him well-qualified in the evaluative

1 criteria of ethical fitness, professional and  
2 academic ability, character reputation,  
3 experience and judicial temperament. The  
4 Committee offered no additional comments.

5 I would note just for the record that any  
6 concerns raised during the investigation  
7 regarding this candidate were incorporated  
8 into my questioning, and I have nothing  
9 further of Judge Few, Mr. Chairman.

10 CHAIRMAN CLEMMONS: Thank you, Mr.  
11 Dennis. Yes, Senator.

12 EXAMINATION

13 (By Senator Martin)

14 SENATOR MARTIN: Mr. Chair, members of  
15 the Commission. Judge, let me ask you --  
16 first off, thank you for being here today and  
17 for your willingness to serve, your service on  
18 the bench previously and your career on the  
19 bench.

20 There's been several discussions we've  
21 had today with candidates regarding their  
22 views of separation of powers. And the idea  
23 that each branch of government has a  
24 particular role to play. Obviously the  
25 tension back and forth can become nuance

1 sometimes or have a -- be a dispute between  
2 the various branches of government.

3 What we're trying to do is just draw out  
4 what each candidate's philosophy really is on  
5 the separation of powers, particularly as it  
6 relates to which branch of government sets up  
7 the policy, which branch of government has the  
8 responsibility to administer that policy  
9 versus the role of the judiciary in  
10 interpreting the laws and applying the  
11 constitution.

12 How do you view the separation of powers  
13 generally, particularly with that tension  
14 between the three branches when it comes to  
15 decision-making by a judge?

16 JUDGE FEW: Senator, I have, for my  
17 entire career, made a focus on observing the  
18 separation of powers, and particularly  
19 observing the proper role of the judicial  
20 branch of government in -- like in the  
21 administration of the government. And I will  
22 -- in the course of my answer, if you'll  
23 permit me, discuss some specific cases in  
24 which that has been the basis of my ruling.

25 It is easy for someone to stand up here

1 or sit anywhere and say that they observed a  
2 separation of powers. But it is much more  
3 convincing, I think, when you see it played  
4 out in -- in decision-making.

5 When I -- I go back to my career as -- as  
6 a circuit court judge, I made a controversial  
7 decision that many of you are familiar with,  
8 involving the City of Greenville smoking ban.  
9 While that is slightly different from the  
10 separation of powers between the executive,  
11 legislative and judicial branches, it is right  
12 on point with the division of power between  
13 the state and its political subdivisions. And  
14 many of you are probably familiar with the  
15 decision. But as a personal matter, I wanted  
16 to uphold the City of Greenville smoking ban  
17 because I didn't want to go out and smell  
18 cigarette smoke in the restaurants when I had  
19 dinner.

20 But I was convinced that when the General  
21 Assembly enacted the Clean Air Act of 1990, it  
22 had considered whether or not to ban smoking  
23 in restaurants and bars and had decided not to  
24 do so. So that when the City of Greenville  
25 came along 17 years later and enacted the

1 smoking ban, it was taking an -- it was  
2 performing an act that was inconsistent with  
3 state law. And my ruling was that act -- that  
4 the ordinance could not stand.

5 Now, the -- the Supreme Court ultimately  
6 reversed that decision and now I can go out  
7 and -- and have dinner without having to smell  
8 everybody's cigarette smoke in Greenville.  
9 And I'm -- as a -- as a person, I'm happy  
10 about that, but -- but that was a situation in  
11 which my own preferences were in conflict with  
12 my understanding of the law, and I followed  
13 the law.

14 In 2005, I was asked to sit on the  
15 Supreme Court in another case that you all are  
16 familiar with, called the South Carolina Ports  
17 Authority versus Jasper County. And the  
18 question there was who had the authority to  
19 set up the -- a port on the Savannah River.  
20 And Jasper had been, as you all recall, had  
21 been trying to get the Ports Authority for  
22 many years to take steps to investigate into  
23 putting a port there and whatever reason, it  
24 hadn't happened. And so Jasper County set out  
25 to do it themselves.

1           There was a lawsuit filed by the Ports  
2 Authority in the Supreme Court's original  
3 jurisdiction. And just by chance, one of the  
4 justices was recused, and I happened to be  
5 near my phone, I suppose, when they called one  
6 day, and so I sat on the case. And I filed a  
7 dissenting opinion because I believed that the  
8 case should be decided not on who was right or  
9 wrong in waiting 15 years, but on who had the  
10 superior authority. And because the state is  
11 a state, and -- and a political subdivision,  
12 such as -- a local government such as  
13 counties, draw their power from the state, if  
14 the state chose to weigh in, the county had to  
15 yield. That was my position.

16           Recently at the -- at the Court of  
17 Appeals, we had a decision, an appeal that  
18 came out of the -- out of Greenville, where a  
19 student and his family had filed a lawsuit,  
20 contending that the school district had  
21 incorrectly calculated the student's grade  
22 point ratio. And that if that calculation had  
23 been performed correctly, that student would  
24 be the number one student in the class. And -  
25 - and so they filed a lawsuit to try to have

1 the grades recalculated. And a circuit judge  
2 granted relief and issued a writ of mandamus  
3 to Greenville County, to the Greenville school  
4 district, requiring them to recalculate the  
5 grades and reinstall this kid as the  
6 valedictorian.

7 And I had an immediate reaction to that.  
8 That's not what courts do. That's what school  
9 districts do. And while that, again, involves  
10 the -- the separation between state and local  
11 government, it also involves separation  
12 between judicial branch and executive branch,  
13 because our school districts, as you know, are  
14 sort of a combination of executive and  
15 legislative forms of government.

16 So I wrote an opinion that explains that  
17 courts do what courts do, and that's not part  
18 of what we do. And I -- I've taken that  
19 position consistently for a long number of  
20 years. It's actually something that I'm firm  
21 about.

22 SENATOR MARTIN: Let me follow up in  
23 asking, you specifically mentioned about the  
24 writ. I'm interested, your comments about  
25 that regarding the legislative branch. The

1 court were to weigh off into a matter  
2 involving the legislative branch, do you think  
3 it would ever be appropriate for the court to  
4 issue a writ against the legislature, for  
5 example, to enforce some order on public  
6 policy?

7 JUDGE FEW: Well, let me -- I -- I will  
8 tread carefully here but -- because obviously  
9 this is a -- a hot conversation here. But  
10 typically -- now in -- in -- in our state  
11 court system, the -- the judicial branch of  
12 government is empowered with the  
13 responsibility of deciding controversies  
14 between its citizens. And to me, that  
15 includes a situation in which the -- the act  
16 of the court can actually afford relief to the  
17 citizen who has brought a claim.

18 If -- so that makes it -- it seems to me  
19 highly unlikely, sir, that the judicial branch  
20 of government would ever issue a writ against  
21 the legislative branch of government, because  
22 the relief that would afford a citizen -- the  
23 act of the court that would -- that would  
24 effectively afford the citizen relief would be  
25 a declaration of the locality of the

1           legislation, not a requirement that the  
2           legislature then act.

3           SENATOR MARTIN: Right. Okay. Let me  
4           ask you this. You talked about public policy,  
5           and I appreciate your response on those cases.  
6           You know, your idea that the separation of  
7           powers -- obviously you've got certain  
8           responsibilities, as I said earlier, between  
9           the various branches of government. When the  
10          legislature or the court has had a holding,  
11          say a split decision -- losing my train of  
12          thought -- a court has a split decision on a  
13          matter and then you get in a situation and you  
14          become a new member of the Supreme Court.

15          And say that same issue in some way comes  
16          back up in front of the Supreme Court, the  
17          court has previously ruled in a manner that  
18          you don't believe is in keeping with the  
19          court's proper role. How do you come down on  
20          the side of stare decisis in that respect?  
21          Would you honor the decision that previously  
22          was issued that you don't agree with? Or  
23          would you side with the position that you  
24          believe is appropriate?

25          JUDGE FEW: Well, we are duty-bound in

1           our judicial system to respect the prior  
2           decisions of the Supreme Court. Stare decisis  
3           is not something that we either accept or  
4           reject, depending on the case. So now there -  
5           - there comes a time -- we -- we -- we see on  
6           -- on a -- on a not infrequent basis where the  
7           Supreme Court takes a new look at an old issue  
8           and changes the rule. But -- but we are  
9           bound.

10                   And the -- I mean, honestly, sir, I -- I  
11           feel as though you're addressing the school  
12           district funding case and I would like to  
13           address that specifically if -- if that is --  
14           if that would help. The decision that is --  
15           has been made, in my view, won't come up  
16           again. What will come up again is a different  
17           question. And that is whether the court will  
18           take a new action to -- in regard to the  
19           action of the legislature.

20                   So the decision that was made by the  
21           Supreme Court in 2014 declaring  
22           unconstitutional the delivery of education  
23           services to folks who live in these rural  
24           districts is a different question than whether  
25           the court will then in the future mandate some

1 action by the legislature. So the -- the --  
2 the idea of stare decisis does not come into  
3 play there, in my opinion.

4 There will be all sorts of different  
5 factors to consider and -- because you -- you  
6 mentioned a writ -- a writ of mandamus or some  
7 other writ. Those are equitable instruments  
8 that have all sorts of factors that the court  
9 must consider before granting one.

10 And so if -- if I were on the Supreme  
11 Court and if the question works -- that I'm  
12 aware, as everyone is, that the Supreme Court  
13 issued a revised order recently, extending the  
14 deadline that they had set till I guess after  
15 the legislative session, if that matter gets  
16 brought before the court by a litigant who has  
17 standing to do so, then the court will face a  
18 new question, and that is whether to at that  
19 time grant an additional writ.

20 The decision by the Supreme Court may  
21 very well control the constitutional question  
22 of whether the school funding formula is  
23 constitutional. But it won't control whether  
24 or not an additional writ is to be issued.

25 SENATOR MARTIN: Well, I would agree with

1           you, now that you've brought it up. And, of  
2           course, I was trying to sidestep that  
3           particular issue. But in the order, second  
4           order, or the order that came out recently,  
5           Justice Kittredge in the dissent, you know,  
6           referenced the underlying decision as being --  
7           I mean, he peeled back the underlying  
8           decision. That's why I asked about the idea  
9           of stare decisis.

10           Everything that emanates from that  
11           decision going forward is a result of that  
12           2014 decision that, you know, some of us  
13           happens to believe, agrees with the dissent,  
14           that that qualitative standard that was placed  
15           in the order, or the decision of the court,  
16           isn't in the constitution. Standard was  
17           created. So I go back to the idea that you  
18           sort of fished this out of me by responding to  
19           it that way. But that original decision, as a  
20           new member of the court, are you going to hold  
21           with the majority that was wrong, in my  
22           opinion? And that asked you to pre-judge the  
23           opinion. And I don't think I could do that.

24           JUDGE FEW: You are showing me no mercy,  
25           Senator. I will answer the question. I -- I

1           -- I -- I -- the -- the question of whether or  
2           not the school funding formula was  
3           constitutional in -- in 2007 or whenever it is  
4           that that case was tried, is a different  
5           question than whether the Supreme Court will  
6           issue a writ of mandamus, or any other writ,  
7           requiring legislative action at some point in  
8           the future.

9           And so the concept, the principal of  
10          stare decisis might very well govern whether  
11          when an identical factual situation reaches a  
12          court, does it comply with the constitution.  
13          But it does not control whether or not the  
14          court uses its power to issue writs to -- in  
15          the future.

16          And I'll -- I'll -- since -- I -- I don't  
17          know whether it was wise for me to have  
18          answered the question as I did. But if you  
19          will permit me just one more minute, I, like I  
20          think many of the members of the General  
21          Assembly are, am appalled by the reality that  
22          our children in rural school districts are not  
23          being given the chance at a proper education,  
24          that my children are given in Greenville  
25          County. And if I were writing an editorial on

1 the subject, I might very well say some of the  
2 very same things that the majority of the  
3 Supreme Court said in their opinion.

4 But when I'm writing a judicial opinion,  
5 I am going to center my thinking on my role as  
6 a judge within the confines that are laid out  
7 for me in the constitution of South Carolina.  
8 And -- and I would, as I did in the smoking  
9 ban case, I will keep my personal feelings to  
10 myself and I will decide those issues based on  
11 law.

12 SENATOR MARTIN: Thank you.

13 SENATOR CAMPSSEN: Mr. Chairman.

14 CHAIRMAN CLEMMONS: Yes.

15 EXAMINATION

16 (By Senator Campsen)

17 SENATOR CAMPSSEN: Thank you, Judge.  
18 Thank you. For your service and your offering  
19 for a higher position in the judicial branch.  
20 And I'm going to ask you some questions I've  
21 asked the candidates, much like the senator  
22 from Pickens.

23 The first one, if the court finds a  
24 constitutional violation is being committed by  
25 another branch of government, can the court

1 then prescribe the manner in which that  
2 violation will be remedied?

3 JUDGE FEW: No.

4 SENATOR CAMPSEN: Okay. In your view,  
5 what constitutes a nonjusticiable political  
6 question?

7 JUDGE FEW: Well, that also is a very  
8 broad question. But basically going back to  
9 the concept of a judiciary that is laid out in  
10 the United States Constitution, judicial --  
11 judicial branches of -- the judicial branch of  
12 the United States government and the judicial  
13 branch of the South Carolina government are  
14 limited in that all we can do is decide actual  
15 controversies.

16 In the situation that -- that you  
17 mentioned a minute ago, if there is a  
18 legislative enactment that a citizen having  
19 standing to raise a challenge, brings before  
20 the court system and the court declares the  
21 act to be unconstitutional, it then becomes  
22 the responsibility of the legislature to --  
23 well, I mean, it -- it then becomes the choice  
24 of the legislature as to whether or not they  
25 would proceed and -- and amend the act and --

1 and add some new act. Then in a subsequent  
2 lawsuit addressing a separate -- an alleged  
3 separate constitutional violation, the court  
4 might have the opportunity to review whether  
5 or not the amended legislation is  
6 constitutional.

7 We see this play out all the time. For  
8 example, in the death penalty situation in  
9 1974 when the United States Supreme Court in  
10 Furman versus Georgia in a couple of related  
11 cases, declared the death penalty scheme to be  
12 unconstitutional, nobody laid out -- no -- no  
13 court laid out any scenario for the -- for the  
14 legislatures around the United States to  
15 proceed. And legislatures around the state --  
16 around the United States took different  
17 approaches to the question.

18 And then over the next series of years,  
19 courts dealing with the question of  
20 constitutionality addressed what the  
21 legislature had done, and did not tell the  
22 legislature what to do. And that will be the  
23 proper way in which a court would interact  
24 with a legislature in dealing with the  
25 constitutionality of legislation.

1                   SENATOR CAMPSSEN: Thank you. Another  
2 question. If a justice on the court has  
3 advocated for the particular outcome that a  
4 party before the court is seeking -- if a  
5 justice has advocated for the particular  
6 outcome, a party before the court is seeking,  
7 does he or she have a duty to recuse  
8 themselves from hearing the case?

9                   JUDGE FEW: I think that -- well, if  
10 there's a factual scenario, say, for example,  
11 a specific dispute that -- that goes on in one  
12 of our communities, the -- I'm just going to  
13 pick something randomly and say that the  
14 completion of I-526, or something like that,  
15 where it's -- it's -- it's a specific issue in  
16 Charleston. And if a justice had said  
17 something public about how this factual  
18 dispute should end, that would, I believe --  
19 potentially at least -- raise questions about  
20 whether the judge would be facing an  
21 appearance of impropriety if the judge were to  
22 proceed in that particular case.

23                   But we are involved -- and -- and we are  
24 encouraged to be involved by the Code of  
25 Judicial Conduct in the improvement of justice

1 and the improvement of law. And I have spoken  
2 many times on -- on legal issues. And I have  
3 advocated publically on many legal issues as  
4 to what I think the law ought to be. On -- on  
5 that particular point, I don't believe that I  
6 would be recused from a question coming before  
7 the Supreme Court as to what the law should  
8 be. But if I -- so I think it depends, but --  
9 but --

10 SENATOR CAMPSEN: Thank you. There's no  
11 right answer. One last question. We may need  
12 a right answer for this one. Is it possible  
13 that our constitution contains undiscovered or  
14 unarticulated fundamental rights a court may  
15 reveal in the future?

16 JUDGE FEW: Well, I -- the way you  
17 phrased the question, no, sir, it's not  
18 possible.

19 SENATOR CAMPSEN: Would you like me to  
20 rephrase it?

21 JUDGE FEW: No, sir. I -- I will say  
22 that -- that one of the challenges that courts  
23 face is applying the concepts of a federal  
24 constitution written in the 1700s and a United  
25 States -- and a South Carolina constitution

1 written in the late 1800s to the modern world.  
2 And sometimes the application doesn't match up  
3 right.

4 For example, who foresaw that there would  
5 be privacy issues and fourth amendment  
6 questions involving our cell phones. Nobody -  
7 - nobody foresaw that in the -- in hundreds of  
8 years ago. But it's still the application of  
9 the same right to the new facts. I do not  
10 understand how there can be a new right  
11 discerned from the hundreds year old words of  
12 a constitution.

13 SENATOR CAMPSSEN: Thank you.

14 JUDGE FEW: Did I get that right?

15 SENATOR CAMPSSEN: There may be a right  
16 answer to that one, but I'm not going to tell  
17 you what it is.

18 CHAIRMAN CLEMMONS: Thank you, Senator  
19 Campsen. Any other questions? Dean Wilcox.

20 EXAMINATION

21 (By Dean Wilcox)

22 DEAN WILCOX: Just to clarify an answer  
23 you gave earlier. You were being questioned  
24 about the responses, and one of them dealt  
25 with tempered -- whether you behaved with the

1 proper judicial attitude, I guess, or oral  
2 argument. And did I hear you correctly  
3 acknowledge that in your experience, yes, some  
4 lawyers may have left the courtroom feeling  
5 like you hadn't perhaps treated them the way  
6 they wanted to be? I don't want to mis-hear  
7 what you said there.

8 JUDGE FEW: I have to acknowledge that.  
9 Otherwise, there probably would not have been  
10 a bench bar survey saying that they had that  
11 impression. So yes, I have to acknowledge  
12 that.

13 DEAN WILCOX: Then a follow-up question a  
14 little bit to some of the more substantive  
15 questions that you were asked about the law --  
16 I didn't want to interrupt you. Were you  
17 done?

18 JUDGE FEW: Well, I -- I -- I want to say  
19 that -- and -- and I -- many of you are  
20 veterans of litigation. And -- and so you've  
21 seen this play out in -- in courtrooms. My  
22 approach going into -- to any situation is  
23 that I am going to -- I'm going to do my best,  
24 if I discipline myself, to not allow someone  
25 to leave with that type of perception.

1           But we also see situations in court where  
2           -- where there is a -- there's a discussion  
3           going on about a legal issue, and there's a  
4           question that a judge wants answered, and  
5           there's a lawyer who understands the strategic  
6           reason not to answer the question. Sometimes  
7           it can be a hypothetical question, in which  
8           case perhaps there's some justification on the  
9           part of the lawyer to respectfully decline to  
10          answer.

11           Sometimes it can be a specific question  
12          about facts or about procedural history, to  
13          which the judge in fulfilling that judge's  
14          responsibility to get everything right, is  
15          owed the -- the -- I might have mixed myself  
16          up -- the -- the -- the lawyer owes a  
17          responsibility to answer the question. And  
18          those of us who have been in court a lot over  
19          the years, including you, sir, has seen this  
20          play out, where lawyers refuse to answer such  
21          questions.

22           And it might be that the judge behaved  
23          absolutely perfectly in attempting to get an  
24          answer, and the lawyer is the -- is the one  
25          who's mistaken about whether or not there has

1           been someone who acted with improper judicial  
2           temperament.

3                     But I also acknowledge, I mean, this is a  
4           -- I'm not perfect in this respect. If I have  
5           a weakness, and as I sit in my chair in court,  
6           then we're talking about it right now. And  
7           it's -- I -- I believe that it's because I  
8           care what the right answer is. I care about  
9           getting to the bottom of the question, to the  
10          bottom of the problem. And so I put my energy  
11          into it and sometimes it comes off looking as  
12          though I to a little bit over-excited.

13                    DEAN WILCOX: I just want to point out  
14          that Judge Few teaches an advanced evidence  
15          course at the law school. And, Judge, I want  
16          to thank you for that service to the school,  
17          as well as your service to the state. If I  
18          can follow up about stare decisis, but in no  
19          specific case or factual context, please. You  
20          mentioned that certainly from time to time you  
21          saw where that it's permissible, appropriate  
22          and realistic that a court will revisit a  
23          question that may have been settled at one  
24          time and -- and change the law.

25                    Can you elaborate a little bit on the

1 circumstances where you think it is  
2 appropriate to move away from a reliance of  
3 stare decisis and to engage in a new direction  
4 of the law? What are the circumstances that  
5 would cause the court to be justified in that?

6 JUDGE FEW: The one -- the one instance  
7 that pops into my head is that our -- when --  
8 when -- under our common law, a litigant in an  
9 action based on negligence who was slightly  
10 negligent themselves, even if it were only one  
11 percent, was barred from recovery under the  
12 doctrine of contributory negligence. Over  
13 time, courts around the country and  
14 legislatures around the country began to  
15 change that to the -- to what was perceived to  
16 be the more friendly version of it called  
17 "comparative fault."

18 We experience that here in South  
19 Carolina, where our -- the Court of Appeals,  
20 in -- in a -- in a very nice opinion written  
21 by Judge Sanders, articulated all the reasons  
22 why it was a good idea to go to comparative  
23 fault. Supreme Court reversed that, but then  
24 later adopting his opinion, changed it back.  
25 So that is a situation that -- that shows how

1 changing values raise questions about whether  
2 or not some law should be changed.

3           Honestly, I think that courts should be a  
4 little more reluctant to dive in there,  
5 because another thing that has happened here  
6 is that we now have a legislature that is  
7 actively involved in setting policy, for  
8 example. Whether contributive fault --  
9 whether contributory negligence or comparative  
10 fault is the law, is essentially a policy  
11 question. And as I stand here right now, I  
12 cannot recall whether or not there had been  
13 any legislative efforts to address comparative  
14 fault, as opposed to contributory negligence.

15           But I think that if I were sitting on the  
16 Supreme Court facing such a question, I would  
17 be very careful not to step across the line  
18 into legislation and into policy. There are  
19 times when courts have to discern policy.  
20 Going back a little bit to Senator Martin's  
21 question, the -- the -- the opportunities for  
22 South Carolina Supreme Court to set policy are  
23 limited.

24           One other example that -- that pops into  
25 my mind is there -- there is a statute that --

1 and this -- this goes to a recent Supreme  
2 Court decision. There is a statute on our  
3 books that says that if a former spouse is  
4 paying alimony to a former spouse, then the --  
5 the continuous cohabitation of the receiving  
6 spouse with another person in a romantic  
7 relationship for 90 or more days ends the  
8 alimony obligation.

9 Recently, the -- the Court of Appeals, on  
10 a panel that I was not on, addressed --  
11 addressed in a split decision whether or not  
12 that should really be 90 days absolutely  
13 continuous. And I don't -- let's see, the --  
14 the Court of Appeals said that it was no  
15 longer necessary that the 90 days be  
16 absolutely continuous, despite a statute that  
17 says it has to be.

18 Now that's probably a pretty good policy  
19 decision, but the Court of Appeals, in my  
20 opinion, had no business making a policy  
21 decision. I was not on that panel. It then  
22 went to the Court of -- to the Supreme Court,  
23 which upheld the statute. And that's an  
24 example of a situation where it might not be  
25 great law anymore. Maybe the -- the law

1 doesn't mesh perfectly with our -- with --  
2 with some of the values that we have in  
3 society. In my opinion, that's a decision  
4 that should have been made by the legislature  
5 and not by the court.

6 So even though -- that might, since it  
7 was based -- the second case is based on a  
8 statute, that might have kind of gotten off a  
9 little bit about your question about stare  
10 decisis. But I do believe that it's -- it's --  
11 - it's very tempting for a court to say "that  
12 doesn't make sense; surely they didn't mean  
13 that, and so let's straighten this out."

14 The minute a court believes that it has  
15 that liberty, the minute a court believes that  
16 it has that power, then you've broken down the  
17 barrier between the judicial and the  
18 legislative branches, because if the court  
19 thinks it has the power when it doesn't make  
20 sense, then it has the power even when it does  
21 make sense. And then, of course, the court  
22 does not have that power.

23 CHAIRMAN CLEMMONS: Thank you Dean  
24 Wilcox. Any others? Senator Malloy.

25 EXAMINATION

1 (By Senator Malloy)

2 SENATOR MALLOY: Thank you, Mr. Chair.  
3 Judge Few, I guess will you start by letting  
4 the committee know how long I've known you?

5 JUDGE FEW: I believe it was the fall of  
6 1983 on -- at Wallace Wade Football Stadium at  
7 Duke University, when I first met Senator  
8 Malloy.

9 SENATOR MALLOY: And, Judge Few, had on a  
10 uniform that day, where you couldn't see his  
11 face. You could see my face. I've known  
12 Judge Few since that time and I had frequent  
13 contact with him.

14 Judge Few, you've been on the -- I guess  
15 let me back up and say that I guess we've been  
16 a part of every race, every appearance before  
17 this for the last 13-plus years, since I've  
18 been on there, because you've been on the  
19 bench a little bit longer than that, right?

20 JUDGE FEW: Right.

21 SENATOR MALLOY: You went on the bench  
22 what year?

23 JUDGE FEW: 2000. I first came before  
24 the Commission in 1999.

25 SENATOR MALLOY: '99, okay. When you

1           were the Circuit Court judge, did you ever  
2           have a death penalty case to come before you  
3           as a sitting judge?

4           JUDGE FEW: I did.

5           SENATOR MALLOY: And where it was not for  
6           a jury; it was for your decision, based upon  
7           the evidence that was before you?

8           JUDGE FEW: No, sir, I did not. It's  
9           very rare, as you know, for a judge to be in a  
10          position of making a decision about what the  
11          penalty should be. The -- the constitution  
12          grants to the -- the defendant and to the  
13          state the right of a trial by jury on the  
14          penalty to be imposed.

15          SENATOR MALLOY: I am aware of a few  
16          situations, I think, at least a member of your  
17          court has come -- that came before on a few  
18          occasions. And obviously sometimes they waive  
19          that appearance before the jury and let the  
20          judge put the penalty on it. My question was,  
21          if that penalty had come before you, I wanted  
22          to see what you had done if it had come before  
23          you. Not asking you what would you -- what  
24          would you --

25          JUDGE FEW: Right.

1                   SENATOR MALLOY:  -- do if -- if it had  
2 actually occurred.  So it has not occurred.

3                   JUDGE FEW:  I did not have any death  
4 penalty cases where the defendant waived their  
5 -- his or her right of trial by jury as to  
6 penalty.  I tried three death penalty cases to  
7 verdict.  Well, one of them twice, actually.  
8 And then because strangely there was a -- not  
9 -- there was a hung jury in the guilt phase of  
10 the trial, and so we -- we tried it again.  
11 But so, yeah, I've taken four death penalty  
12 cases to verdict.

13                   SENATOR MALLOY:  And I think that some of  
14 the discussion that we were talking about  
15 earlier was in relation to stare decisis as to  
16 -- basically I guess one way of saying it is  
17 that if there's a novel question that has come  
18 up that is unsettled, the question is whether  
19 you -- whether you believe it's better to  
20 settle it or to wait and settle it right.  I  
21 think that's what some of the basis of some of  
22 the earlier questions were.

23                   JUDGE FEW:  Well, if -- if -- if there's  
24 a -- a question that comes up that is  
25 unsettled and in order to resolve the

1 controversy that is before the court, it is  
2 required that the unsettled issue be settled  
3 and the court has to settle it, and the court  
4 can't wait at that point.

5 Now then -- well then the question comes,  
6 is it actually necessary to answer this  
7 question in order to resolve the dispute. But  
8 if it's necessary to a decision that an  
9 unsettled question be resolved, even a lower  
10 court would be -- would be required to settle  
11 to rule. And then, of course, it's subject to  
12 review. But certainly at the Supreme Court.  
13 Did I answer you question?

14 SENATOR MALLOY: You have. I think that  
15 what happens is that, you know, we are toying  
16 around whether you would let it remain  
17 unsettled, because it doesn't hit right on the  
18 point. It's just settling it --

19 JUDGE FEW: Right.

20 SENATOR MALLOY: -- you know, I think  
21 there was a quote that someone had given us  
22 that a question is better settled than  
23 necessarily settled right and for, on and on,  
24 if that makes any sense.

25 JUDGE FEW: Well, are you taking me back

1 to the school funding?

2 SENATOR MALLOY: No. Actually, I really  
3 am waiting for that to play out. And I get an  
4 opportunity to play it in that same box over  
5 here. And so I think that the question  
6 becomes is that, that when that question comes  
7 up, it's going to lead into my next question,  
8 whether or not that you allow it to remain  
9 unsettled or whether you jump in with --

10 JUDGE FEW: Right.

11 SENATOR MALLOY: -- both feet and hands  
12 and try to get an answer the question.

13 JUDGE FEW: Well, okay, let me answer the  
14 question. So I probably should have addressed  
15 this in my initial response to Patrick's  
16 question about why I want to be on the Supreme  
17 Court. But to me, one of the most important  
18 things that courts do, and certainly the  
19 Supreme Court, is give predictability and give  
20 certainty to its citizens, to the citizens of  
21 our state and to businesses and to -- and to  
22 the government. And so for that -- that's  
23 kind of the philosophical underpinning of  
24 stare decisis, is that once a question gets  
25 decided, it should not be likely re-decided.

1           And I have -- you know, and at the Court  
2 of Appeals and as a circuit judge, there's  
3 never an opportunity to reconsider a settled  
4 question. On Supreme Court, there is such an  
5 opportunity, and I believe that the Supreme  
6 Court should not eagerly accept the  
7 opportunity to re-make a decision simply  
8 because the votes have changed. And that's  
9 part -- that's part of the limited power and  
10 role of the government that I have been  
11 talking about in most of these questions.

12           But -- but if -- again, I don't think  
13 that same question is coming back up. In  
14 fact, it -- it can't, because the statutes  
15 that were in play have been -- are no longer  
16 in effect in that respect, that it -- the --  
17 the -- there will be new legislation that will  
18 have to be tested under the same  
19 constitutional principles. And the reasoning  
20 and decision that was -- of the -- of the  
21 Abbeville School District Case will apply. It  
22 just might not dictate the outcome because the  
23 situation could very well be different.

24           SENATOR MALLOY: And so I think that in  
25 your time on the Court of Appeals has been --

1 has it been five years?

2 JUDGE FEW: Been almost six.

3 SENATOR MALLOY: Six years. What -- what  
4 has been brought to our attention is that in  
5 the -- it seems like there's a progressive  
6 appeals as it relates to your opinions. It's  
7 like in 2015, it notes that you were reversed  
8 12 times. And I was trying to see if you were  
9 going to answer that, to see whether or not  
10 answering novel questions sort of led to that.  
11 You got any discussion on --

12 JUDGE FEW: Well, I would be surprised to  
13 -- to learn that that statistic is correct,  
14 but --

15 SENATOR MALLOY: Well, let me say this,  
16 and you can address -- I'll just go to the  
17 last four years. Some information that we  
18 have says that you were appealed three times  
19 and reversed twice in 2011. That you were  
20 appealed once and not reversed in 2012. Was  
21 appealed five times and reversed twice,  
22 vacated once in 2013. And then it goes on to  
23 say that it was appealed 12 times and reversed  
24 seven in 2014 and vacated once. In 2015 it  
25 seems a lot to me as well, appealed 27 times

1 and reversed 12 times.

2 JUDGE FEW: I'm not familiar with those  
3 statistics. There wouldn't seem to me to be  
4 any reason why the number of appeals have gone  
5 up. But back to your question, the -- what  
6 we've been talking about so far --

7 SENATOR MALLOY: Indulge for a moment. I  
8 don't expect you to answer total question.  
9 That's just the information that we have. And  
10 of course, Mr. Chair, I look at it too, I  
11 don't know how many times you offered that  
12 many opinions and how many times that opinion  
13 goes up. And I'll just ask if you knew. If -  
14 - if you don't -- if you don't know that, I  
15 can end up holding on and getting some more  
16 information. That's information that we have  
17 in one of our documents here that says that  
18 there were -- appealed 27 times and reversed  
19 12.

20 SENATOR MALLOY: So I guess they're  
21 asking me now, is that the whole Court of  
22 Appeals? Or is it just --

23 MS. WALL: Three person panel.

24 SENATOR MALLOY: Just against three  
25 person panel? That's what this is?

1 MS. WALL: Yes, and he just happened to  
2 be on that panel and not necessarily the  
3 author.

4 SENATOR MALLOY: Well, when is he the  
5 author and when is he vote against it? So  
6 27 times --

7 JUDGE FEW: Well, let me -- may I address  
8 a couple of aspects of your question? You  
9 started off with a general question and then  
10 you asked a specific question. So I'd like to  
11 hit both those. I'll start with the -- the --  
12 the fact that it doesn't matter whether I was  
13 the authoring judge or whether I was on the  
14 panel. If the decision's wrong, I take  
15 responsibility for it. Now it's possible that  
16 I was in a dissenting position or -- and --  
17 and perhaps in that situation, I wouldn't.

18 But the -- the general question that you  
19 asked is -- was in regards to changing the  
20 law, or -- or really I think what you were  
21 getting at is am I aggressive about trying to  
22 change the law, or -- or am I, in fact, in --  
23 in observation of the laws that exist right  
24 now.

25 What we've been talking about in all the

1 questions that I've answered so far have been  
2 the approach that a Supreme Court justice  
3 would take. That is different from the  
4 approach that a Court of Appeals judge should  
5 take, because a Court of Appeals judge does  
6 not have the power to change law. And that --  
7 I mean, you put a period at the end of the  
8 sentence there is no exception to that.

9 And I have been involved in lots of cases  
10 where I have made -- I have made rulings that  
11 I didn't think were -- I didn't -- if I had  
12 written the law, I wouldn't have written it  
13 that way. But the Supreme Court has been  
14 clear about what the law is, and I've followed  
15 the law.

16 Now as far as the specifics, I -- I  
17 really don't know how to address that.  
18 Actually, I think that my affirmed rate is --  
19 has been -- has been pretty good with the  
20 Supreme Court. But the other thing about that  
21 is that if I write -- if we write an opinion  
22 and everything is correct about it, and if the  
23 Supreme Court then looks at it and agrees,  
24 then nobody ever hears about that. It's not  
25 affirmed, it's not reversed. The review is

1 denied and the Supreme Court never addressed  
2 it.

3 So if -- if those -- even if those  
4 statistics are accurate, it would be only  
5 those cases that the Supreme Court heard from  
6 my panel where the issues were difficult or  
7 where the -- where the decision was in doubt,  
8 I suppose. I -- I -- I'm -- I'm surprised by  
9 those statistics and I -- I would -- would  
10 enjoy a chance to take a look at them, if  
11 that's a concern of -- of the Commission.

12 SENATOR MALLOY: I don't know if it's a  
13 concern. I just wanted to go into that line  
14 of questioning because it seemed to me to be a  
15 lot, as it relates to the information that we  
16 are -- that we are receiving. And -- and, of  
17 course, it may seem like it would lead to more  
18 questions as to how many times did you dissent  
19 in those.

20 And most judges know that what their  
21 record is, as it relates to the -- from their  
22 opinions of their panels and it goes to the  
23 court because if the information we have is  
24 accurate, however, you read it, they would  
25 have -- I'll just tell you so you'll know,

1           they have your overall reversal rate as 64  
2           percent since 2007. And I just wanted to make  
3           sure that we as a panel will get a chance to  
4           end up reviewing as to how we are reporting  
5           this information when we have jurist that's  
6           been serving for 16 years, because it's  
7           obviously taken him a bit of a surprise.

8                     And so we make certain if that's the  
9           case, that we can get our information such  
10          that it would know how many times did he  
11          dissent, how many times did he, you know, was  
12          a two to one or maybe not dissenting, just not  
13          voting with them, and how many of those that  
14          he actually author. And so we want to make  
15          sure that it's fair to the person who's coming  
16          before us, as opposed to just giving a blanket  
17          reversal rate. That's all I have.

18                    CHAIRMAN CLEMMONS: Thank you, Senator  
19          Malloy.

20                    SENATOR MALLOY: I do want to get -- I do  
21          want to get an answer to this, though. I  
22          raised it. I want to get some more  
23          information on this reversal.

24                    CHAIRMAN CLEMMONS: We will have staff  
25          research it. Thank you. Any other questions?

1 Yes, Ms. Wall.

2 EXAMINATION

3 (By Ms. Wall)

4 MS. WALL: Judge, I just have a quick  
5 question for you. Do you believe if you were  
6 a member of the Supreme Court that consensus  
7 building in any way would be a part of your  
8 style as a member of the court?

9 JUDGE FEW: Yes.

10 MS. WALL: Why would that be important?

11 JUDGE FEW: Well, in part because it's  
12 important to give the Bar and to give the  
13 public guidance. And I think that one of the  
14 disservices that courts do from time to time  
15 is allow out these divided opinions and to  
16 leave the public wondering what the law is.  
17 And so that's one.

18 But secondly, lots of the questions that  
19 -- that the Court of Appeals addresses,  
20 questions that perhaps Senator Malloy was  
21 addressing now, and certainly questions that  
22 the Supreme Court addresses are not absolutes.  
23 There are different ways of expressing  
24 results. There are different ways of  
25 explaining things. And I think sometimes a

1 disagreement about that type of thing is  
2 something where members of the court should  
3 work together.

4 If there's a situation where there's just  
5 a flat-out disagreement about what the law is  
6 or how a case should come out, then that  
7 rightfully results in a divided -- a divided  
8 opinion. But we -- we spend a lot of time at  
9 the Court of Appeals building consensus. And  
10 -- and I have led those efforts and I have --  
11 when -- when I get approached by other judges  
12 asking me if I can think about something  
13 differently, eagerly participate in that  
14 conversation, to see if I can do so,  
15 consistent with what I believe the law is and  
16 what I'm convinced the outcome of the case  
17 ought to be.

18 MS. WALL: Thank you.

19 CHAIRMAN CLEMMONS: Thank you, Ms. Wall.  
20 Mr. Hitchcock.

21 MR. HITCHCOCK: Nothing.

22 CHAIRMAN CLEMMONS: Any other questions?

23 (No response.)

24 EXAMINATION

25 (By Chairman Clemmons)

1                   CHAIRMAN CLEMMONS: Judge Few, just a  
2 couple questions for you. There has been a  
3 lot of discussion over the last few years  
4 about who controls the criminal docket in the  
5 state of South Carolina. Would you care to  
6 comment on that?

7                   JUDGE FEW: It is a -- the -- the answer  
8 to the question is a function of law. It's  
9 not -- there's not some abstract truth or  
10 perfect way to do it. It's a question of law.  
11 In the first place, it -- it -- I think that  
12 perhaps we have had maybe a little bit of a  
13 practical tradition, even though it is based  
14 in statute, there's sort of a practical  
15 tradition where each solicitor kind of handles  
16 it the way they want. But generally, the  
17 solicitor controls the docket, and the Supreme  
18 Court ruled in that case. That's -- they  
19 ruled.

20                   So the question now becomes what's the  
21 law about the managing of the docket. That  
22 law could arise, I believe, in at least two  
23 different ways. It has not arisen yet in  
24 either way. So right now we have this  
25 unknown. We have solicitors out there who are

1 -- and public defenders and private lawyers  
2 who are -- and judges who are administering  
3 criminal courts and how that is being done is  
4 not governed by law. But it -- it could arise  
5 in two different ways.

6 First of all, there could be legislation.  
7 The -- the General Assembly could pass a law  
8 and it could be signed by the governor and it  
9 would become law, under which we would  
10 administer criminal courts. The other way, in  
11 my opinion, is if the Supreme Court could --  
12 could use its rule-making authority under, I  
13 think, Article 5, Section 4 of the  
14 constitution and they could -- and the Supreme  
15 Court could enact or propose rules for the  
16 procedure -- there would be procedural rules  
17 in the Court of General Sessions and those  
18 would be submitted to the General Assembly.  
19 And if -- if approved by the General Assembly,  
20 would become law.

21 We -- we now have a situation where the  
22 Supreme Court's chief justice has issued  
23 administrative orders. And there -- there's  
24 not a statewide order. They're -- they're  
25 circuit by circuit. Those orders to-date have

1 generally been entered in cooperation with the  
2 solicitor and the public defender of that  
3 circuit and we're experimenting with -- with  
4 what is the best way to do this.

5 But -- so I -- I spent a lot of time,  
6 almost ten years, doing a lot of work with  
7 solicitors and public defenders to administer  
8 the court's general sessions, or to -- or to  
9 play a role in administering the court general  
10 sessions. And so I -- I probably have a lot  
11 of thoughts about what that law should say,  
12 but it has to arise, in my opinion, from one  
13 of those two sources, either legislation or  
14 through the court's ruling.

15 CHAIRMAN CLEMMONS: Senator Malloy.

16 RE-EXAMINATION

17 (By Senator Malloy)

18 SENATOR MALLOY: Judge Few, in one of  
19 those situations, I guess that question came  
20 up five years or so ago. We are concerned  
21 about the court's dockets and those kinds of  
22 things, and we came up with these consent  
23 orders. And I think that the General Assembly  
24 has not only added new judges, we added  
25 lawyers to the appellate defense -- I know you

1 had a bit of a program as well to try to help  
2 get some relief into the court schedule during  
3 that point in time. So you recognize that  
4 there was an issue with a crowded court  
5 system, if you will. And you wanted to make  
6 certain that we get lawyers involved. And I  
7 think that your program -- you had a program  
8 at one point in time --

9 JUDGE FEW: It's still going on. It's  
10 the -- we -- we -- we call it the "appellate  
11 practice project." And I'll be happy to  
12 explain it. But if we --

13 SENATOR MALLOY: You can tell us briefly.

14 JUDGE FEW: What we -- when I first got  
15 to the Court of Appeals, I, through the use --  
16 through the -- with the assistance of Ken  
17 Richstad, who was the relatively recently  
18 retired clerk of the Court of Appeals, did a  
19 little statistical study to see how long it  
20 was taking cases to go from notice of appeal  
21 to oral argument and final decision.

22 And what we learned was that in February  
23 of 2010, which was the first month I was  
24 there, those cases that were set for oral  
25 argument were taking 26 months to get from

1 notice of appeal to oral argument. And I  
2 believe that that is unacceptable. So we set  
3 about all sorts of efforts to try to do our  
4 work more quickly. And over time we  
5 dramatically shortened the period of time in  
6 which cases went from notice of appeal to oral  
7 argument.

8 When that happened, it became quite  
9 obvious that there was a different problem at  
10 appellate defense, and was that they didn't  
11 have the people power to handle the cases on a  
12 timely basis. And so I -- probably three  
13 years ago, I was -- I would handle -- on a  
14 weekly basis I would have a stack of files  
15 this high brought to my office, asking where -  
16 - and -- and by the way, at that point in a  
17 case, the criminal files are pretty small. So  
18 this is 20 or 30 cases a week probably where  
19 I'm signing orders to extend the deadline for  
20 briefing and criminal cases, and it's a tenth  
21 extension, ninth extension. So we're looking  
22 now at like 11 months out.

23 So I -- I spoke with the Attorney  
24 General's Office, I spoke with Bob Dudek at  
25 Appellate Defense and you -- you -- you know,

1           there's only so much work a person can do.  
2           You all have addressed the -- this very same  
3           issue in -- in -- in your legislation and you  
4           have sense then, I think, granted three. No,  
5           three, because at the time we did it, there  
6           were nine positions at Appellate Defense. And  
7           I believe that there are now 12.

8                     But -- so I thought that we could come up  
9           with a plan to -- to alleviate this, where if  
10          -- if Appellate Defense would identify cases  
11          that were likely to receive oral argument, and  
12          then we would go out and through -- with the  
13          Bar and identify young lawyers, sometimes more  
14          experienced lawyers, who wanted to get  
15          experience in handling appeals, we could match  
16          those people up and get a whole bunch of cases  
17          done for free. And it -- it has been highly  
18          successful.

19                    The first year we assigned 51 appeals to  
20          private lawyers, each of whom handled the  
21          cases with no compensation. They did so under  
22          the supervision of Appellate Defense.  
23          Appellate Defense assisted in the preparation  
24          of the briefs and records from a logistical  
25          standpoint, but in terms of the writing of the

1           brief and the handling of oral argument, the  
2           private lawyers did it.

3                   And people looked at me when I proposed  
4           that, they said I was crazy. You'll never get  
5           50 lawyers to come and handle a criminal  
6           appeal for free. And in the second year we  
7           did 25 cases. This year, last month, we  
8           handled another CLE at the Bar, where we  
9           handed out 26 cases. So we've now actually  
10          assigned 101 cases to private lawyers over the  
11          last three years who have represented criminal  
12          defendants with no compensation.

13                   I mentioned that three years ago it was  
14          quite common that I would have a stack of  
15          files this high brought to me to sign ninth  
16          and tenth extensions. I almost never sign  
17          extensions anymore in criminal cases. The  
18          clerk's office, under our operating  
19          procedures, has the authority to extend the  
20          deadline for a briefing, a criminal appeal, up  
21          to three times. So it -- it takes the fourth  
22          extension before it would be brought to me  
23          anyway. But I rarely get those.

24                   So we have really cut about six,  
25          certainly five months off of the backlog at

1 Appellate Defense through this program. In  
2 the process, we've had some brilliant lawyers  
3 come and make some high-quality effective  
4 arguments, that write some very, very good  
5 briefs. There have been decisions --  
6 convictions that have been reversed, points of  
7 law that have been clarified. And I don't  
8 mean to suggest that it's the goal that  
9 convictions be reversed, but if there's a --  
10 if there's an error of law, then that should  
11 happen. So I'm just -- I'm just pointing out  
12 that the quality of this work has been  
13 tremendous.

14 You told me to address it briefly. I  
15 didn't address it briefly. I apologize for  
16 that.

17 SENATOR MALLOY: We know that we had two  
18 at one time. That was last year, we added two  
19 to the Appellate Defense. I know we had to  
20 have supervising terms. Think that adds to a  
21 little bit of the backlog that we talked  
22 about. Thank you. Mr. Chairman.

23 CHAIRMAN CLEMMONS: Thank you.

24 JUDGE FEW: If I can -- may I follow up  
25 with that?

1 CHAIRMAN CLEMMONS: You may, yes.

2 JUDGE FEW: That -- Senator Malloy asked  
3 me initially about the administration of  
4 justice in the court of General Sessions and -  
5 - and that project doesn't address that  
6 directly. But I think what that -- what the  
7 planning and implementation of that project  
8 shows is that I don't accept that the court is  
9 not doing its job efficiently. And I work  
10 hard collaboratively and otherwise to -- to  
11 solve the problem if -- if I -- if I can. And  
12 I think that's a -- a good example of success  
13 that I've had in trying to make our system  
14 work better.

15 CHAIRMAN CLEMMONS: Thank you, Judge Few.  
16 Any other questions?

17 (No response.)

18 RE-EXAMINATION

19 (By Chairman Clemmons)

20 CHAIRMAN CLEMMONS: One final question  
21 from me, Judge, with regard to this process.  
22 Can you give us insight with regard to the  
23 test that was administered by counsel to you?  
24 How did you go about preparing for that test?

25 JUDGE FEW: Well, in two ways really. I

1 mean, I -- as any judge should do, I keep up  
2 with the decisions of the Supreme Court and I  
3 stay abreast of decisions at the Court of  
4 Appeals. My -- my normal way of doing that is  
5 not to learn it where I can recite it, but to  
6 learn it where I know what issues have been  
7 addressed and what -- so that if something in  
8 that same subject matter comes up later, I --  
9 I'm aware that a decision has been made. Many  
10 times I will remember the outcomes, the  
11 specific outcome, but I don't dedicate myself  
12 to memorizing it that carefully.

13 What we know about this test is that it  
14 tests memorization. And so in order to  
15 prepare for the test, I do my best to memorize  
16 what the courts have said. Frankly sir, I do  
17 not believe that it is all that useful a  
18 measure of the quality of a judge because the  
19 -- the -- what -- what I think a judge should  
20 do is understand and -- and think deeply. And  
21 the ability to recite what a court has said is  
22 -- is part of that, but it's -- it's not all  
23 of that. And so that's how I prepared.

24 CHAIRMAN CLEMMONS: Thank you. Thank you  
25 very much. Any other questions?

1 (No response.)

2 CHAIRMAN CLEMMONS: Hearing none, Judge  
3 Few, again we appreciate your offering for  
4 this important position on the Supreme Court.  
5 And we are grateful for your current service,  
6 leading the Court of Appeals. That concludes  
7 this portion of our screening process.

8 As you know, Judge, the record will  
9 remain open until the report is published and  
10 you may be called back at such time if the  
11 need should arise. I'll remind you of the 48-  
12 hour rule and ask you to be mindful of that.  
13 If anyone should inquire as to whether or not  
14 they may advocate for you, in the event that  
15 you are screened out, and as you've described  
16 it, please advise them of the 48-hour rule.  
17 We thank you again for offering and we thank  
18 you for being here today.

19 SENATOR MALLOY: Mr. Chairman.

20 CHAIRMAN CLEMMONS: Yes.

21 SENATOR MALLOY: Before the chief judge  
22 leaves, you had asked that staff check on the  
23 research that they have, and I think that they  
24 have an answer. And I just want to make  
25 certain that we have added some clarity to

1 that question before Judge Few left.

2 CHAIRMAN CLEMMONS: Excellent.

3 MR. DENNIS: The statistics that Senator  
4 Malloy was referring to were the result of a  
5 Westlaw word search in which Judge Few's name  
6 and the action of the Supreme Court having  
7 reversed the case would have been entered into  
8 the search criteria.

9 What that yielded is anything that the  
10 Supreme Court actually took up that Judge Few  
11 sat on the panel. That would not include  
12 those matters for which Cert was denied.  
13 Those matters which were summarily upheld or  
14 otherwise not reviewed. So that is a limited  
15 slice of the number of opinions that Judge Few  
16 generated as a member of a three--person  
17 panel.

18 JUDGE FEW: Also, would not include --  
19 you might have said this, but it doesn't  
20 include opinions that were not reviewed on my  
21 cite, including hundreds of unpublished  
22 decisions that -- that I participate in  
23 deciding every year.

24 CHAIRMAN CLEMMONS: I would suggest that  
25 that's a very poor tool for aiding us in this

1 process. And if we're going to go into  
2 reversals, we need to delve into those  
3 decisions to find out exactly which ones  
4 belong to the judge for screening.

5 MR. DENNIS: And just briefly, I'd say  
6 that it's typically only done to show, you  
7 know, pattern in the presentation. In this  
8 instance, it's my fault that it was not  
9 collated and organized in a way that was a  
10 little more useful for the Commission's  
11 purposes.

12 CHAIRMAN CLEMMONS: Thank you, Mr.  
13 Dennis, we appreciate that. Senator Malloy.

14 SENATOR MALLOY: I want to add to it too.  
15 I appreciate it coming to light.  
16 Unfortunately through Judge Few, I'm trying to  
17 see if that's the question that we have when  
18 we have these things that are before us. By  
19 the Chairman who just said it is a poor tool.  
20 Just wanted to make sure that we can add  
21 something to those tools to make certain we  
22 can delve into it, because whenever we have  
23 something like that, we want to make sure that  
24 it's either accurate or not. If what it tells  
25 you doesn't paint a complete picture, we need

1 to know that for the benefit of everyone.

2 CHAIRMAN CLEMMONS: Absolutely. And  
3 again, all of the various pieces of this  
4 process, any of them standing alone are not  
5 decisive or positive in this process. They --  
6 they all are assigned their appropriate  
7 weight. I'd suggest this particular tool,  
8 there would be very little weight assigned,  
9 and then we decide based upon the totality of  
10 what's in the tool chest. Are there any other  
11 comments or questions?

12 (No response.)

13 CHAIRMAN CLEMMONS: Hearing none, again,  
14 thank you, Judge Few.

15 JUDGE FEW: Thank you.

16 (Candidate excused.)

17 CHAIRMAN CLEMMONS: We are going to take  
18 a five minute recess.

19 (Off the record.)

20 CHAIRMAN CLEMMONS: Ladies and gentlemen,  
21 we're back on the record. And we are pleased  
22 to have with us The Honorable Aphrodite  
23 Konduros, who is seeking nomination for Seat 2  
24 of the South Carolina Supreme Court. Judge  
25 Konduros, it's great to have you with us

1           today.

2                   JUDGE KONDUROS: Thank you very much.

3                   CHAIRMAN CLEMMONS: Thank you for your  
4 service to South Carolina and your offering  
5 for this important position.

6                   JUDGE KONDUROS: Thank you, sir.

7                   CHAIRMAN CLEMMONS: We'll start by  
8 swearing you in.

9                   (The witness is sworn in.)

10                  CHAIRMAN CLEMMONS: Have you had an  
11 opportunity, Judge, to review your personal  
12 data questionnaire?

13                  JUDGE KONDUROS: I have sir, thank you.

14                  CHAIRMAN CLEMMONS: Is it correct?

15                  JUDGE KONDUROS: I think I sent an  
16 amendment in, which was accepted on October  
17 23rd. If you don't have that before you, it  
18 was pretty simple housekeeping. But I'll  
19 state it if you need me to.

20                  CHAIRMAN CLEMMONS: We do have it. It's  
21 in the record. And it's considered an  
22 amendment to your personal data questionnaire.

23                  JUDGE KONDUROS: Thank you.

24                  CHAIRMAN CLEMMONS: So with regard to the  
25 summary of your personal data questionnaire as

1           amended, would you have any objection to  
2           making that a part of the record of your sworn  
3           testimony today?

4                    JUDGE KONDUROS:  No, sir.

5                    CHAIRMAN CLEMMONS:  Thank you.  Are there  
6           any objections by Commission members?

7                    (No response.)

8                    CHAIRMAN CLEMMONS:  Hearing none, so  
9           ordered.

10                   [EXHIBIT NO. 7 - Judicial Merit Selection  
11           Committee Personal Data Questionnaire for The  
12           Honorable Aphrodite Konduros, dated July 28,  
13           2015, admitted.]

14                   [EXHIBIT NO. 8 - Amended Judicial Merit  
15           Selection Committee Personal Data  
16           Questionnaire for The Honorable Aphrodite  
17           Konduros, dated October 23rd, 2015, admitted.]

18                   CHAIRMAN CLEMMONS:  Judge, the Judicial  
19           Merit Selection Commission has thoroughly  
20           investigated your qualifications from the  
21           bench.  Our inquiry has focused on the nine  
22           evaluative criteria and has included a ballot  
23           box survey, a thorough study of your  
24           application materials, verification of your  
25           compliance with state ethics laws, search of

1 newspaper articles in which your name appears,  
2 a study of previous screenings, and a check  
3 for economic conflicts of interest. We have  
4 received no affidavits filed in opposition to  
5 your election and there are no witnesses  
6 present to testify today. Do you have a brief  
7 opening statement that you'd like to share at  
8 this time?

9 JUDGE KONDUROS: No, sir. In light of  
10 how many you are going to screen, I yield.

11 CHAIRMAN CLEMMONS: We appreciate that.  
12 Thank you so much. You get points. If you  
13 would please turn your attention to Ms. Dean  
14 and answer any questions she may have.

15 JUDGE KONDUROS: Thank you very much.

16 CHAIRMAN CLEMMONS: Thank you.

17 EXAMINATION

18 (By Ms. Dean)

19 MS. DEAN: Thank you, Mr. Chairman and  
20 members of the Commission. I have procedural  
21 matters to take care of first. Judge  
22 Konduros, you have before you the sworn  
23 statement you've provided with detailed  
24 answers to over 30 questions regarding  
25 judicial conduct, statutory qualifications,

1 office administration and temperament.

2 In addition to the letter that you just  
3 referenced, are there any additional  
4 amendments you would like to make to that  
5 sworn statement?

6 JUDGE KONDUROS: I have a nice one on  
7 Friday, and Dean Wilcox was there, I received  
8 a commendation from the Commission on the  
9 Profession, which I was unaware I was  
10 receiving at a random frame shop. So other  
11 than that, no, ma'am.

12 MS. DEAN: Well, congratulations. At  
13 this time, Mr. Chairman, I would like to ask  
14 that Judge Konduros' sworn statement be  
15 entered as an exhibit into the hearing record.

16 CHAIRMAN CLEMMONS: Are there any  
17 objections?

18 (No response.)

19 CHAIRMAN CLEMMONS: Hearing none, so  
20 ordered.

21 [EXHIBIT NO. 9 - Judicial Merit Selection  
22 Committee Sworn Statement of The Honorable  
23 Aphrodite Konduros, dated July 28th, 2015,  
24 admitted.]

25 MS. DEAN: Thank you. One final

1 procedural matter, I note for the record that  
2 based on the testimony contained in the  
3 candidate's PDQ, which has been included in  
4 the record, with the candidate's consent,  
5 Judge Konduros meets the statutory  
6 requirements for the position regarding age,  
7 residence and years of practice.

8 Judge Konduros, why do you now want to  
9 serve as a Supreme Court judge? And how do  
10 you feel your legal and professional  
11 experience thus far will assist you in being  
12 an effective judge?

13 JUDGE KONDUROS: Thank you very much for  
14 that question, and I appreciate the chance to  
15 respond. I have served six and a half years  
16 on the Family Court and now I'm close to seven  
17 and a half on the Court of Appeals. And I  
18 first want to say what an honor it is to even  
19 be able to file. I am two generations away  
20 from four grandparents coming through Ellis  
21 Island and it is not wasted on me how many  
22 opportunities are available in South Carolina  
23 and this great country.

24 That being said, I will tell you that I  
25 have learned in my seven-plus years on the

1 Court of Appeals that this truly is a calling  
2 to do this work. There are so many different  
3 ways that you can serve the law. But this one  
4 has turned out to be more of a passion and  
5 more of a joy to me than I even understood  
6 when I ran for it the first time.

7 Appellate review is really based upon the  
8 fact that you have enough trial experience to  
9 be able to read a transcript in black and  
10 white and feel the trial and see the trial and  
11 see what's happening and watch. Unless you've  
12 been a trial lawyer that has seen your client  
13 get 30 years, you don't completely understand  
14 why they did not make the proper post-trial  
15 motions right at that moment. There is a  
16 moment of darkness in that. Or when you get a  
17 15 million dollar verdict against you, or when  
18 your client that -- you have to understand  
19 being a trial lawyer, to be a good judge.

20 I always -- there was a bit of a joke  
21 with Family Court that I understood that no  
22 one has slept well the night before they come  
23 to court. And you have to give them that  
24 first 40 minutes of craziness while they  
25 settle in without enough coffee or any such

1 thing as that. So it has taken this road  
2 before I even felt it was appropriate for me  
3 to offer. But even to offer is in itself a  
4 step of faith.

5 I know, I was reading Ephesians this  
6 morning, it says "You walk worthy of the  
7 vocation where you are called." And I think  
8 at this point in time, I feel and believe that  
9 I am capable of doing that final review that  
10 is necessary to being a Supreme Court justice,  
11 that it is even hard now to be the next of  
12 final review on a case and know that when you  
13 hold your hand out over signing an opinion,  
14 that you have to give it that second. And I  
15 know I will hold my hand over more Supreme  
16 Court opinions. But I think the ability to  
17 cherish what that job is is something that I'm  
18 ready for, and that is why I offered myself.

19 MS. DEAN: Thank you, Judge. Judge  
20 Konduros, are there any areas, including  
21 substantive and subjective areas of the law,  
22 that you would need to additionally prepare  
23 for in order to serve as a judge on the  
24 Supreme Court? And how would you handle that  
25 additional preparation?

1 JUDGE KONDUROS: In a laughing matter, I  
2 will say that in light of the fact that we had  
3 no clue what this test was going to be like  
4 this time, I feel very boned up on all  
5 subjects in order to prepare for that. But I  
6 will say, it's been a lot of years since I was  
7 an attorney on a death penalty case. And  
8 since the Supreme Court does hear death  
9 penalties, I have been pulling the cases and  
10 working on that and trying to get a feel for  
11 it again. It's impossible for me to go watch  
12 one, because it might come before me. But I  
13 would probably say that is the one area.

14 MS. DEAN: Thank you, Judge. Judge,  
15 although you addressed this in your sworn  
16 affidavit, could you please explain to the  
17 members of the Commission what you think the  
18 appropriate demeanor for a judge is?

19 JUDGE KONDUROS: Certainly. I think that  
20 when a judge appears 24 hours, seven days a  
21 week, not just in a courtroom, you should be  
22 courteous and firm, and most of all be calm.  
23 There is absolutely no reason to raise one's  
24 voice or -- or to have to call anyone down.  
25 At that point, you are always standing in a

1 courtroom on the trial level with -- with  
2 deputies and bailiffs. And a look at one of  
3 them, silences what's going on with a  
4 situation.

5 But you've got to keep in mind, again,  
6 that no one has slept and no one is fully  
7 prepared and they are -- they are arguing over  
8 their children. They are arguing over their  
9 property. They are arguing over their loss of  
10 liberty, and you must be kind and courteous  
11 and calm and keep control of your courtroom  
12 that way. If you can set the example of being  
13 calm, the rest of the courtroom tends to  
14 behave that way.

15 MS. DEAN: Thank you, Judge. Judge  
16 Konduros, what suggestions would you offer for  
17 improving the backlog of cases on the docket?

18 JUDGE KONDUROS: I am the chairman or the  
19 subcommittee chairman of the Supreme Court  
20 Commission on Docketing. I am in charge of  
21 the Family Court Docket Committee, which you  
22 see in my report. And I am vice-chairman of  
23 the Common Pleas Docketing Committee. And to  
24 that end, I spent almost the last two years  
25 working on it, and I am pleased to tell you,

1 if you -- if you want to look and I'll give  
2 you a citation -- Family Court, there is no  
3 backlog, that we are reaching across the  
4 state, that 85 percent benchmark of cases  
5 being tried in 365 days.

6 You have to look on any given day, a  
7 county will fall below or fall above. I got a  
8 call from someone recently who said  
9 Chesterfield was behind. But when you look at  
10 a small docket like that -- it was three cases  
11 that had reached 365 days, so we were able to  
12 put them on the docket the following week and  
13 keep them back in line. So as we trimmed and  
14 -- and changed a lot of things to do that,  
15 having temporary hearings within 30 days,  
16 making sure the administrative judge and the  
17 docketing clerk and the clerk of court  
18 understand the ebb and flow of it, it may be  
19 as simple as canceling a half-day hearing and  
20 backfilling with temporary hearings.

21 And I don't know that to be something  
22 that some don't understand. There are mostly  
23 lawyers on this panel. But a temporary  
24 hearing for Family Court is the very first  
25 hearing that takes place that puts the clients

1 in the position that they will probably be in  
2 for the next nine months. Who has the  
3 children, who's in the house, who pays the  
4 insurance, who pays the car payment, who pays  
5 the utility bills. And that hearing, in my  
6 opinion, should never go longer than a month  
7 before you have it. Three weeks is better.  
8 Because once -- and particularly with poor  
9 people -- you miss that first car payment,  
10 power bill or whatever, they never recover.

11 So I will say that across the state, we  
12 are maintaining that, but it takes a constant  
13 ebb and flow. And so what I concretely do --  
14 because I have an administrative lean -- is I  
15 check with every county every Monday, the  
16 administrative judge, and say "You're a little  
17 behind here. You're a little behind here.  
18 What are you going to do? How are we going to  
19 do this? Do you need an other judge? Do you  
20 have too much work? Can you go help out in  
21 another county?"

22 I actually truly monitor it with court  
23 administration staff, which may not have been  
24 what I was supposed to do on the docketing  
25 committee. But if that's what it takes to

1 keep it at 85 percent and 365 days, that's  
2 what I've been doing.

3 Common Pleas to the same degree, where I  
4 served with Judge Clifton Newman. It takes  
5 calls. One of the big problems -- and it was  
6 -- the judges were always saying we weren't  
7 behind -- and I will finish -- they would  
8 transmit that a case was finished to Columbia  
9 and it would have the wrong code in it. And  
10 when you did that, within 15 minute you got a  
11 response that said "the following errors have  
12 occurred." Well what happened was, the person  
13 who was transmitting was not getting the reply  
14 that said anything was wrong. He or she  
15 thought it was all great.

16 It was a question of having the right  
17 email address in the individual county. So  
18 now we got a lot of that straight. I would  
19 call somebody and say "You haven't -- you  
20 haven't transmitted since April," and she  
21 would be in tears. She had transmitted into  
22 space, with one number wrong. So when we went  
23 back, everybody jumped up. It was more of a  
24 record keeping issue than it was a docketing  
25 issue, I am pleased to tell you.

1 MS. DEAN: Thank you, Judge. Judge  
2 Konduros, the Commission received 561 ballot  
3 box surveys regarding you, with 61 additional  
4 comments. The ballot box surveys, for  
5 example, contained the following very positive  
6 comments: excellent temperament, very fair to  
7 everyone, well-reasoned decisions, model judge  
8 and works extremely hard. Five of the 61  
9 comments expressed concerns. One of these  
10 concerns involved public speaking engagements.  
11 Could you please discuss your beliefs on the  
12 proper demeanor of judges at public speaking  
13 engagements?

14 JUDGE KONDUROS: That's such a vague  
15 question. Shorter, funnier. I -- I don't  
16 exactly know how to address that. I tend to  
17 accept when it is appropriate. There's a lot  
18 of continuing legal education seminars, a lot  
19 of conventions. I -- I enjoy Rotary, Kiwanis  
20 and such as that. Girls State and Boys State  
21 are two of my favorites to go to. I'm a  
22 former Girls State Governor, so I try to go  
23 every year.

24 And -- and you have to tailor it to the -  
25 - to the appropriate community. I -- I -- I

1 see most of you. I doubt I speak anymore than  
2 any of -- most of you on this panel. But I  
3 think it is important to go and not become too  
4 isolated. I -- I speak a lot to high schools,  
5 where it's like career day, do you want to be  
6 a judge, and such is that. It's cute in  
7 kindergarten classes, so I take my robe and  
8 they love to run around in it. But I think  
9 I've answered that to the best of my ability.

10 MS. DEAN: Thank you, Judge. Now I just  
11 have some housekeeping issues. Have you  
12 sought or received a pledge of any legislator  
13 prior to this date?

14 JUDGE KONDUROS: No, ma'am.

15 MS. DEAN: Have you sought or have you  
16 been offered a conditional pledge of support  
17 of any legislator pending the outcome of your  
18 screening?

19 JUDGE KONDUROS: No, ma'am.

20 MS. DEAN: Have you asked any third  
21 parties to contact members of the General  
22 Assembly on your behalf?

23 JUDGE KONDUROS: No, ma'am.

24 MS. DEAN: Are you aware of anyone  
25 attempting to intervene in any part of the

1 process on your behalf?

2 JUDGE KONDUROS: No, ma'am.

3 MS. DEAN: Have you contacted any members  
4 of the Commission?

5 JUDGE KONDUROS: I see several members of  
6 the Commission regularly, but I have not  
7 contacted them for anything to do with my  
8 election.

9 MS. DEAN: Thank you. Do you understand  
10 that you are prohibited from seeking a pledge  
11 of commitment until 48 hours after the formal  
12 release of the Commission's report?

13 JUDGE KONDUROS: Yes, ma'am. This is my  
14 seventh election.

15 MS. DEAN: Have you reviewed the  
16 Commission's guidelines on pledging?

17 JUDGE KONDUROS: Yes, ma'am.

18 MS. DEAN: As a follow up, are you aware  
19 of the penalties for violating the pledging  
20 rules? That is, it is a misdemeanor, and upon  
21 conviction, the violator must be fined not  
22 more than \$1,000 or imprisoned not more than  
23 90 days?

24 JUDGE KONDUROS: Yes, ma'am.

25 MS. DEAN: I would note for Commission



1 Court today, as we think about the separation  
2 of powers and the division between the three  
3 branches of government, what's your basic  
4 opinion about the separation of powers and the  
5 proper role of the judiciary, the legislative  
6 and executive branches? I know it's a wide-  
7 open question, but very pertinent to, you  
8 know, what court does, particularly the  
9 Supreme Court --

10 JUDGE KONDUROS: Yes, sir.

11 SENATOR MARTIN: -- on a daily basis, in  
12 regards to public policy. You said public  
13 policy, you know, the role of the court,  
14 judicial restraint, that we appear to refer to  
15 sometimes regarding stepping off into policy,  
16 versus interpreting the laws, interpreting the  
17 constitution particularly, as its written.  
18 What's your basic philosophy on that?

19 JUDGE KONDUROS: Thank you. I think you  
20 will find that I am a very narrow  
21 constructionist when it comes to that. And at  
22 the risk of sounding sophomoric in  
23 explanation, I do see it as a three-legged  
24 stool. And the state rests on that stool and  
25 the stool must be kept level. And with that,

1 the legislative and the executive and judicial  
2 branch must maintain their own rule.

3 I'm not here running for the executive  
4 department or for the legislature. I  
5 understand the role of judiciary. And with  
6 that, it is to uphold the law as written,  
7 while it stands as it does. And if it  
8 changes, I change with it. If you want to say  
9 that for this particular crime they get five  
10 years, and two years from now they get ten  
11 years, that is how it will go. Will be no  
12 moaning about the fact that it changed from  
13 five to ten or you changed blue to orange or  
14 orange to green. I'm a very narrow  
15 constructionist about that.

16 I don't believe at all in judicial  
17 activism. It always amuses me when I see a  
18 ruling that so-and-so is a business court --  
19 the business judge, or so-and-so is a defense  
20 judge, because all that means is, over that  
21 period of time, a clerk of court anonymously  
22 put in my box a case where the business won.  
23 And then maybe another case where the business  
24 won. It's not a question of whether I'm pro-  
25 business. There was two cases in a row where

1 the business had the better case and had won  
2 at the lower court and may have been upheld or  
3 reversed, as it were. It is only the case  
4 before me, and only while it's before me.

5 SENATOR MARTIN: Well, let me ask you  
6 this. Understanding those views, how would  
7 that guide you in regards to maybe a case that  
8 the court has previously ruled on and you  
9 possibly disagreed with? That you, you know,  
10 you felt maybe it was a narrow decision,  
11 three-two, whatever the majority, certainly  
12 not a unanimous decision and not getting into  
13 discussing a specific case, unless you choose  
14 to do so, but what about that -- how would  
15 that guide you in the area of stare decisis,  
16 and particularly if you disagreed with it?

17 JUDGE KONDUROS: There's probably been a  
18 number of occasions when I disagreed with it.  
19 The problem is, it doesn't flow back to me and  
20 go back. It might be the best reason why I  
21 chose to work on -- to -- to run for the  
22 Supreme Court, is the fact that if it's a --  
23 like you said, a three-two decision, and I  
24 might find myself more in line.

25 But you've got to be a good soldier. And

1 if that is the current state -- let's say it  
2 was -- let's say it was statutory  
3 interpretation. All right, so that might be  
4 different than if you look at it if it's legal  
5 precedent for common law. So a statutory  
6 construction, if they read -- there was a -- I  
7 -- I recently was reversed on a case about a  
8 Horizontal Gaze Nystagmus Test -- I'm sorry  
9 for the court reporter -- that -- about moving  
10 the pencil in front of somebody's eyes, on the  
11 side, DUI. As I read the statute, I felt that  
12 if you have to under the statute videotape all  
13 of the tests, it would include the test, not  
14 only to show that it was given, but what the  
15 result was. And I think all that's going to  
16 change with technology and the better cameras  
17 and such.

18 In -- in my case, you could see the back  
19 of the -- the -- the trooper's head, but you  
20 couldn't see the gentleman actually taking the  
21 test or -- he was -- he was quite hurt and it  
22 was an interesting case. But, you know, they  
23 found that it was good enough that he had been  
24 offered the test and that a test was videoed,  
25 even though it wasn't a test you could see the

1 result of. And -- and so that is how my  
2 Supreme Court ruled. And in a future case, if  
3 -- if there's absolutely identical  
4 circumstances -- which is very rare -- I would  
5 be bound to follow.

6 But I recently had a case, Pedery versus  
7 McKinney, although it might be McKinney versus  
8 Pedery, you know they change, where it's a 90-  
9 day alimony case, for those of you that do  
10 family court. And -- and your statute says --  
11 or our statute says that if you cohabit  
12 with someone for 90 consecutive days or that  
13 you separate during those 90 days only to  
14 avoid the statute, it is a grounds for  
15 terminating alimony.

16 And in this case, while they were  
17 together over a 90 day period, it wasn't 90  
18 consecutive days. She lived somewhere else  
19 three days a week, taking care of  
20 grandchildren. So I felt that a clear reading  
21 of the statute without putting any of my own  
22 into it, the case did not meet it, and I was  
23 the dissent. And the other two on my panel  
24 found that they had cohabitated enough and  
25 stopped the gentleman from receiving alimony,

1 stopped his alimony. The Supreme Court  
2 reversed and said a clear reading of the  
3 legislation was that they had to be 90  
4 consecutive days, which had not been proven.

5 And a lot of times what happens when you  
6 see that, then y'all go back and revisit it  
7 and maybe close the holes, in which case, I  
8 would rule what the statute was when it comes  
9 back to us. I -- I -- you will not find a  
10 judicial activism bone in my body. I know I'm  
11 -- I'm a good solider. I work hard. I answer  
12 the question before me.

13 And I clearly wanted to say, which I said  
14 earlier, I'm not a defense judge or a  
15 plaintiff's judge. That would simply be that  
16 I got five cases that went that way in my box  
17 at a time. People love to say that, one way  
18 or another, and it -- and it's unfortunate. I  
19 have no idea what's in my January box. I've  
20 seen my December box. And you just -- you  
21 just -- the case before you, only while it's  
22 before you.

23 SENATOR MARTIN: Thank you so much.

24 JUDGE KONDUROS: Thank you so much for  
25 the question.

1 SENATOR CAMPSEN: Chairman.

2 CHAIRMAN CLEMMONS: Senator Campsen.

3 EXAMINATION

4 (By Senator Campsen)

5 SENATOR CAMPSEN: Thank you, Judge  
6 Konduros, for your service and your  
7 willingness to serve at a higher level. And  
8 I'm going to ask you, like senator from  
9 Pickens, I've been asking everyone some  
10 questions --

11 JUDGE KONDUROS: Yes, sir.

12 SENATOR CAMPSEN: -- so don't take these  
13 personally.

14 JUDGE KONDUROS: Of course.

15 SENATOR CAMPSEN: But I am interested in  
16 your personal views. The first question is,  
17 if upon finding constitutional violation by  
18 another branch of government, may the court  
19 then prescribe a manner in which the violation  
20 must be remedied?

21 JUDGE KONDUROS: By another branch of  
22 government.

23 SENATOR CAMPSEN: Yes.

24 JUDGE KONDUROS: Possibly Abbeville? Is  
25 that what we're talking?

1                   SENATOR CAMPSEN: I'm not going to  
2                   comment on -- I'm talking about a general  
3                   principle that can be applied in really  
4                   innumerable instances. That's why it's  
5                   important.

6                   JUDGE KONDUROS: Well, it is important,  
7                   but it would violate my oldest canon, which is  
8                   only the case and only before me. But  
9                   obviously this is Judicial Merit Selection and  
10                  -- and I should attempt to answer, but as  
11                  vague as -- as that would be, let me -- let me  
12                  -- let me come up with a -- with a scenario in  
13                  my head and see. That is if it is brought  
14                  before the court in its original jurisdiction  
15                  is found to be a public exception, such that  
16                  even if the person who brought it is not  
17                  harmed -- which is what happened in Sloan,  
18                  which I know Mr. Hitchcock is familiar with --  
19                  that

20                  MR. HITCHCOCK: Which one?

21                  JUDGE KONDUROS: Exactly. Seeing as  
22                  Andrews and Sloan here, present. It may be  
23                  enough -- again in the abstract -- it may be  
24                  enough to recognize the possibility of the  
25                  constitutional problem without providing a

1 remedy.

2 MR. CAMPSSEN: All right. Thank you.  
3 Next question. What is a nonjusticiable  
4 political question?

5 JUDGE KONDUROS: When you break down --  
6 when you break down a controversy into whether  
7 it is legal or whether it is policy, for one  
8 of a better term, it -- it -- it's a question  
9 -- it's a question whether it's something that  
10 could be corrected within the body of law,  
11 without stating a new policy that might not be  
12 -- might be outside of the rule of the  
13 judiciary.

14 I think, Senator Campsen, I -- I  
15 understand your questions and I -- and I want  
16 to assure you that I've had a fair amount of  
17 disagreement with opinions over the years, the  
18 30-something years that I've been a lawyer,  
19 where I felt that for whatever reason which I  
20 was not privy to, the Supreme Court felt it  
21 needed to speak on something that maybe  
22 strained the boundaries of what their role  
23 was. And when you read those cases as now a  
24 practiced appellate court judge, you go  
25 (Candidate demonstrates) -- I drew in breath

1 for the court reporter -- to -- make -- make a  
2 good record -- and you wonder if there wasn't  
3 a lesser way to look at those particular  
4 cases, rather than direct "going to do this,  
5 going to do this by this deadline, don't like  
6 -- stop this immediately" and such. I don't -  
7 - I think there's -- I think there's ways to  
8 work that don't undermine public opinion of  
9 any branch of government, and it would be a  
10 very great concern of mine that we tread  
11 lightly.

12 SENATOR CAMPSEN: Thank you. Is it  
13 possible that our constitution contains yet  
14 undiscovered and unarticulated fundamental  
15 rights that the court may discover and reveal  
16 at some point in the future?

17 JUDGE KONDUROS: It's been on the books a  
18 long time, and it -- and it's hard to believe,  
19 but yes, I would say nothing is impossible. I  
20 think so much is changing with technology. I  
21 wrote a case recently called State -- a  
22 dissent in State versus Laquan -- L-A-Q-U-A-N  
23 -- Brown, which is published if you want to  
24 see it. And it was a question of the right to  
25 open someone's cell phone without a warrant.

1           And I treated the cell phone as what  
2           they've become now, which is not just a  
3           telephone, but your banking records, your  
4           photos, your pictures, all your passwords,  
5           anything that would have required a warrant.  
6           And they found that the phone had been  
7           abandoned and the deputy simply did "1, 2, 3,  
8           4" and it opened, but -- but I would have  
9           required a warrant.

10           And so it was -- it was a yet unanswered  
11           question in South Carolina, which you almost  
12           didn't expect. But I think in the area of the  
13           technology and warrant-less searches, it -- it  
14           may -- it may turn out that there are more  
15           rights that we -- you know, where technology  
16           is outrunning us. I know I have watched as  
17           you all have what's happening on the news the  
18           last couple of days and they were talking  
19           about that you can go with a search warrant to  
20           go get something from some company, but it's  
21           so encrypted that they can't even open it.  
22           And those are going to create interesting --  
23           interesting problems to come. But they're  
24           going to have to be rare, Senator Campsen.  
25           That's not a -- very rare.

1           SENATOR CAMPSEN: Is that not just an  
2 application of the same principle or right as  
3 to a different set of factual facts and  
4 circumstances?

5           JUDGE KONDUROS: It is. I think the only  
6 leap you have to make is from bank records in  
7 a paper file and bank records on your phone.  
8 And -- and a lot of times that has -- it has  
9 not -- there -- there's a couple -- there's a  
10 United States Supreme Court case that came  
11 down in the last two years that said that even  
12 when you arrest somebody you have to have a  
13 warrant to open the phone in their pocket, and  
14 you know who it belongs to.

15           When you look at the exception of the  
16 Fourth Amendment, such as abandonment, stop  
17 and frisk or plain view or -- you know, you  
18 know, obviously you're going to make  
19 exceptions if you think the phone is a  
20 detonator, or if you think there is a hostage  
21 situation and where he or she is is in the  
22 phone, you can -- you can have those kind of  
23 exceptions.

24           But yes, I think -- I think it's a lot  
25 easier to start the process. And Dean

1           Wilcox's professors have taught me well. You  
2           should work within the existing parameters as  
3           much as you can, because then the playing  
4           field is clear to all.

5                    SENATOR CAMPSEN: Then my final question  
6           hopefully. If a justice has advocated for a  
7           particular outcome and a party before the  
8           court is seeking, does that justice have a  
9           duty to recuse themselves?

10                   JUDGE KONDUROS: I think I'll just speak  
11           to recusal in general. I think it is the  
12           height of pride to think that another judge on  
13           my level is not as able to hear a case as I  
14           am. So if a person to this point -- and I've  
15           only had three recusals ever on the Family  
16           Court bench and none on the Court of Appeals,  
17           but no one has asked.

18                    I think when we -- I just today or  
19           tomorrow will go through my January box and  
20           may self-recuse myself on something. I do a  
21           word search and look for family names and  
22           anything where I might own property, or such  
23           as that, and do it. But if you have had -- I  
24           think the problem with your question is -- for  
25           me, is that you would never know my public

1 opinion on something because I wouldn't have  
2 one.

3 I used to instruct -- I -- when I was the  
4 director of Greenville DSS, I would instruct  
5 my caseworkers, "You have no personal  
6 opinion."

7 SENATOR CAMPSEN: What does the canon  
8 say? What does the cannon judicial conduct  
9 say on the standard for recusal?

10 JUDGE KONDUROS: The -- the recusal --  
11 and -- and it's -- and it's broader than just  
12 the canons because it's also -- you have to  
13 look at the judicial advisory opinions. But  
14 if there is an appearance of impropriety --  
15 and -- and frankly, the appearance of  
16 impropriety is completely subjective. But if  
17 I feel that anyone thinks that there would be  
18 an appearance of impropriety or that -- most  
19 people just have one court hearing in their  
20 whole life, whether it's magistrate's court or  
21 -- God forbid --

22 SENATOR CAMPSEN: Is it impropriety or  
23 impartiality?

24 JUDGE KONDUROS: It's it's -- it's  
25 impartiality too, but -- it is impartiality,

1 but the question is, what they see and what  
2 they don't like is they feel that the question  
3 has been predetermined by --

4 SENATOR CAMPSSEN: -- It's --

5 JUDGE KONDUROS: -- having that judge.

6 SENATOR CAMPSSEN: -- it's whether the  
7 parties feel like they can have --

8 JUDGE KONDUROS: Yes.

9 SENATOR CAMPSSEN: -- an impartial  
10 hearing.

11 JUDGE KONDUROS: Yeah.

12 SENATOR CAMPSSEN: So if a justice has  
13 advocated for an issue, for a particular  
14 outcome that comes before the court, and a  
15 party knows that's happened --

16 JUDGE KONDUROS: Then they move to  
17 recuse.

18 SENATOR CAMPSSEN: -- is that a violation  
19 of the Canon? Can a party believe that  
20 they're getting an impartial hearing if they  
21 know that one of the justices presiding over  
22 their hearing has taken a position in the  
23 exact case that's come before them?

24 JUDGE KONDUROS: And you're saying that  
25 they have filed and said there's an ethical

1 violation with the judicial --

2 SENATOR CAMPSSEN: I'm not saying they  
3 have filed. It's not it -- it's the judge's  
4 duty to recuse; it's not the party's duty to  
5 request it.

6 JUDGE KONDUROS: I can't --

7 SENATOR CAMPSSEN: Parties can, but --

8 JUDGE KONDUROS: Sure.

9 SENATOR CAMPSSEN: -- it's the judge's  
10 duty to recuse.

11 JUDGE KONDUROS: I don't want to answer  
12 that in terms of another judge. Senator, I  
13 would --

14 SENATOR CAMPSSEN: No, this is  
15 hypothetical.

16 JUDGE KONDUROS: But it's hypothetical if  
17 -- if you're asking me, do I think I have a  
18 duty to turn in a judge --

19 SENATOR CAMPSSEN: I want to know what you  
20 would do as a justice, is what I want to know.

21 JUDGE KONDUROS: Well, first of all,  
22 you'd -- you'd never know what my personal  
23 opinions were. I mean, you never would. I --  
24 I gave that up when I was sworn in to be a  
25 judge. I won't have any. You won't know any;

1           you won't have any. I don't write anything; I  
2           make a point about that. I don't talk about  
3           cases.

4                     If I -- like I recently gave CLE three or  
5           four times on futility, talking about do you  
6           have another chance if you fail to object at  
7           the appropriate time? Is there such a thing  
8           as futility in South Carolina? That -- say  
9           the judge called you down five times. You  
10          don't want to object the sixth time. Does  
11          that set up a case of futility?

12                    I will talk about doctrines and -- and --  
13          and areas like that, because I think the  
14          hardest thing for any judge is to have a case  
15          that's not fully tried and then have to make  
16          your decision. We don't want to find things  
17          unpreserved. But for me personally, if anyone  
18          raised that they thought that I had spoken on  
19          such an issue, I almost wouldn't have to hear.  
20          I would recuse myself.

21                    Because again from the beginning, another  
22          judge could hear it just as well as I am. I -  
23          - I believe in Judicial Merit Selection. If  
24          not me, you can go across the street to  
25          Calhoun or -- or Richland County Courthouse

1 and find someone equally able to hear it as  
2 me. And I would not want them the rest of  
3 their life to think I lost that case where the  
4 judge didn't recuse himself. Because then you  
5 put the judge in a position as well. Not that  
6 that is as important as the client's position,  
7 but then you even have to think about "do I  
8 rule for them or do I rule against them?"  
9 They thought I was going to rule against them  
10 anyway. Don't even do that; just step down.

11 SENATOR CAMPSEN: And you impair the  
12 public's confidence in judiciary.

13 JUDGE KONDUROS: Completely. And you  
14 know in Family Court in Greenville, we ran six  
15 courtrooms every day. They walk in and I  
16 realize I recognize somebody. Their name  
17 might have been "Tom Smith or Bill Smith."  
18 But the docket was huge. You heard 6,000  
19 cases a year. And I went "I'm not going to  
20 hear this. They used to be my neighbor. "If  
21 y'all will wait a second, I'll see of Judge  
22 Bartlett hasn't started yet." And we would  
23 just switch. There was no need; they were  
24 there and they had witnesses. Why not let  
25 them have somebody fresh.

1 SENATOR CAMPSSEN: Thank you.

2 JUDGE KONDUROS: Thank you, Senator  
3 Campsen.

4 CHAIRMAN CLEMMONS: Mr. Hitchcock.

5 EXAMINATION

6 (By Mr. Hitchcock)

7 MR. HITCHCOCK: Judge Konduros, thank you  
8 for being with us today and we certainly do  
9 appreciate your service and certainly offering  
10 yourself up to go through this process to seek  
11 a position on the Supreme Court.

12 I was interested in one of the cases that  
13 you use as an example. You were talking  
14 about, I believe it was a DUI case. And  
15 correct me if I'm wrong, I think this was the  
16 case where the officer had moved the patrol  
17 car for a minute and you were applying the  
18 precedent from the Supreme Court, basically,  
19 with the HGN test, right?

20 JUDGE KONDUROS: Which all he did in that  
21 case was back it up and straighten it up so  
22 that the accused would be on camera.

23 MR. HITCHCOCK: Correct. And the --

24 JUDGE KONDUROS: Which is different from  
25 the one we talked about.

1 MR. HITCHCOCK: Sure.

2 JUDGE KONDUROS: There were two different  
3 ones.

4 MR. HITCHCOCK: Right. My interest in  
5 that is is that, you know, when you looked at  
6 that case, and I was, I guess, trying to  
7 narrow down the context of -- did you see that  
8 as more of -- in reaching that decision, were  
9 you applying more of a stare decisis approach  
10 in that there was a similar case that had  
11 already been decided? Or was it your view,  
12 you know, from applying the general rules of  
13 statutory construction, claiming ambiguous --

14 JUDGE KONDUROS: It was statutory  
15 construction because what had happened in this  
16 situation was where the accused came to rest  
17 was outside of the camera, and the deputy took  
18 the time -- or the trooper, I don't remember -  
19 - to back up and straighten up the car so the  
20 camera was line. And it was a matter of  
21 seconds. Defense raised that under the  
22 statute all of the testing had to be on  
23 camera. But there was no testing that took  
24 place while the deputy straightened up the  
25 car, because the deputy was the one that would

1 actually do the testing, and obviously he  
2 couldn't do that while driving. So it was  
3 straight statutory construction.

4 MR. HITCHCOCK: Thank you. And just one  
5 other question. And this is somewhat along, I  
6 think, somewhat along the lines of both  
7 Senator Martin and Senator Campsen's  
8 questions, but maybe just a little bit  
9 different. When you think about the concept  
10 of, I guess, judicial restraint, one of the --  
11 it's been my experience in case law -- is that  
12 courts, especially the Supreme Court, has  
13 restrained itself to only rule on issues of  
14 constitutionality of a statute or an action of  
15 the executive, when necessary, and only to the  
16 extent -- through the narrowest means  
17 possible, only to the extent necessary to  
18 reach a decision. Just wanted to get your  
19 view on that, and do you think that that's a  
20 appropriate vehicle by which to -- that the  
21 court can restrain itself?

22 JUDGE KONDUROS: You know, the current  
23 rule of law in constitutionality is to find a  
24 statute unconstitutional, there must be a  
25 repugnance beyond a reasonable doubt, which is

1 -- as -- as high as we go for a standard of  
2 review. And I would certainly adhere to that.  
3 It -- it's never -- it -- it -- it comes back  
4 -- what Senator Campsen does, you can't  
5 undermine. The -- the rule -- the -- the  
6 playing field should not change that much.  
7 You ought to be able to leave South Carolina  
8 for five years and come back and know what's  
9 going on.

10 MR. HITCHCOCK: Thank you.

11 JUDGE KONDUROS: In the world of law, I  
12 guess I should say.

13 CHAIRMAN CLEMMONS: Thank you, Mr.  
14 Hitchcock. Mr. Mack.

15 EXAMINATION

16 (By Representative Mack)

17 MR. MACK: Thank you, Mr. Chairman.  
18 Great to see you. Great to have --

19 JUDGE KONDUROS: Thank you so much.

20 MR. MACK: -- you with us and glad you  
21 continue to serve. I was just curious, and  
22 this is a question just some curiosity. You  
23 mentioned earlier that you don't -- as a  
24 judge, you don't want people knowing what your  
25 personal beliefs are. How difficult is that

1           when you're giving speeches -- which I think  
2           is a good thing, by the way. You can do so  
3           much good in terms of connecting with folks  
4           and motivating young folks to go into the law  
5           and go into the profession. But just curious,  
6           how difficult is that when you're giving  
7           speeches to have that barrier, so to speak?

8           JUDGE KONDUROS: Very good question. I -  
9           - I guess I don't find -- I do not find it  
10          hard anymore. That's part of -- you know,  
11          there is a moment -- and -- and I know most of  
12          you that are legislators felt it -- there's a  
13          moment when you put your hand on the Bible and  
14          offer yourself for service where you realize  
15          you are stepping away from what you might have  
16          known as a litigator, or whatever you did in  
17          your own business, and -- and you have made  
18          that choice. And -- and it's not something I  
19          ever took lightly. You know, I might think of  
20          the interesting, funny thing to say in my  
21          head, but I have sworn that I won't say  
22          something that might be considered, you know,  
23          inappropriate.

24          I am everyone in Greenville County's  
25          designated driver, I believe, because they can

1 depend on the fact that no matter what we go  
2 to or how many overtimes, I will be there to  
3 take them home. And that was a decision,  
4 because you are a judge 24/7. And you can  
5 talk to schools and things about why you want  
6 to be a lawyer or what's interesting and what  
7 you need to study to do so, which is in  
8 keeping -- and when you talk at law seminars,  
9 so many cases come out every year, you could  
10 talk about something you see in the law that's  
11 of interest and -- and things that you think  
12 are coming down the pike.

13 I tend to like to speak in terms of  
14 United States Supreme Court decisions and how  
15 they may or might affect us, which is always  
16 clear. And then I have a couple speeches that  
17 I do, one in particular is why we have to take  
18 care of ourselves, why we need to put the  
19 phone down, turn off the phone and go outside  
20 at night and check on each other and -- and be  
21 kind to each other and -- and come up with a  
22 hobby.

23 The chief justice and I had a discussion,  
24 I -- I'm -- I'm sorry we're going to go to 24-  
25 hour e-filing. I know the system had -- has

1 to be 24 hours, but I -- I really -- I really  
2 worry about the lawyer that at -- gets ready  
3 to finally leave his office for vacation at  
4 eight o'clock on a Friday and the thing buzzes  
5 and there is something he's got to do.

6 Whereas, he would have been a clean-getaway.  
7 The lawyers know at five o'clock, you can go  
8 "whoo-hoo" -- W-H-O-O hyphen H-O-O. So a lot  
9 of my speech is on -- on taking care of  
10 yourself and taking care of each other, kind  
11 of the self-appointed caring committee.  
12 Everyone works too hard; I know y'all do. I  
13 know y'all did this summer. Thank you, sir,  
14 for your question.

15 CHAIRMAN CLEMMONS: Thank you, sir, for  
16 your question. Senator Malloy.

17 EXAMINATION

18 (By Senator Malloy)

19 SENATOR MALLOY: Thank you, Mr. Chair.  
20 Just want to note that Judge Konduros spent a  
21 lot of time, I believe, back in 2009/2010, I  
22 had the chance to serve on the Sentencing  
23 Commission with her when we had many, many  
24 meetings. And so we would have that -- that  
25 relationship. And just know that obviously

1 that commission did really well, so thank you.

2 JUDGE KONDUROS: Thank you. I -- I will  
3 say that it's an important part of my personal  
4 knowledge was to be on that commission with  
5 Senator Campsen as well. I did not fully  
6 understand the scope and breadth and the  
7 decision-making process that goes into such  
8 things, and I was honored to be on -- actually  
9 I think I told the Senator at the beginning,  
10 "I don't know how this is going to come out,"  
11 and he said "Just watch and learn," and he was  
12 right over the course of time. And I think  
13 there's some amazing things that came out of  
14 it. And I had very small parts in it.

15 SENATOR MALLOY: Would like to say,  
16 prison population is down over 4,000. We  
17 closed three and a half prisons, so --

18 JUDGE KONDUROS: Astonishing.

19 SENATOR MALLOY: With that, I just wanted  
20 to end up just noting that relationship. At  
21 the same time, we asked at one of the other  
22 ones, we have information in some of our  
23 information that's been provided to us as to  
24 the reversal rate that we've had for Court of  
25 Appeals judges primarily.

1 JUDGE KONDUROS: Yes, sir.

2 SENATOR MALLOY: They've explained why it  
3 shows a certain number. They have yours at  
4 seven times in 2015, reversed three; ten times  
5 in 2014, reversed eight. And I realize now  
6 that they are using the number. But what they  
7 had was is that your understanding of your  
8 reversal rate is probably not as high as the  
9 information that they gave us because they  
10 basic search on Westlaw -- they got you down  
11 at 52 percent. That seems to be high, doesn't  
12 it?

13 JUDGE KONDUROS: Well, and it does. And  
14 -- and I -- and I did check on that when I saw  
15 it and I will tell you that what they did, as  
16 -- as you all know, the Court of Appeals sets  
17 -- sits in panels of three, and we each have  
18 three or four, it just depends on the case  
19 load, authored cases every month. So you  
20 would sit on either nine or twelve cases every  
21 month. The way they calculated that was if  
22 you were on the panel, they did not calculate  
23 if you were the author. And I did not go back  
24 and try to recapture that figure, and I -- and  
25 I'm -- I am confident it would be lower.

1           There is -- part of someone said -- I  
2           don't -- I don't know who -- that appellate  
3           panels are like the dog Cerberus in mythology  
4           -- C-E-R-B-E-R-U-S -- that it is a three-  
5           headed body of one, and if the three heads can  
6           work together and not bite each other, that  
7           the animal is stronger. And there are give  
8           and takes. I think as a new appellate judge,  
9           I'd say "Of course, that's affirm." And the  
10          other two would go "No, it's" -- and, you  
11          know, and then you -- and then you started  
12          from there, and it was a -- a real lesson in  
13          working together.

14                 And I would say that I don't believe my  
15          personal one would be that high as author,  
16          because you kind of keep up with that, as a  
17          matter of pride. But if I had, in fact,  
18          joined the panel because I couldn't live with  
19          the decision and felt that it was in keeping  
20          with the law, then it probably -- that number  
21          is probably right.

22                 CHAIRMAN CLEMMONS: Thank you, Senator  
23          Malloy. Do you know what that number is?

24                 JUDGE KONDUROS: No, sir, I didn't -- I  
25          didn't --

1                   CHAIRMAN CLEMMONS: I thought as a matter  
2 of pride you might.

3                   JUDGE KONDUROS: We -- we say, my -- my  
4 clerks and I, Friday at eleven o'clock is a --  
5 a big day. We go over the week's advance  
6 sheets and any changes to the 4th Circuit or  
7 the Supreme Court, and sit down, everybody has  
8 to be ready and do it as a group. And so we  
9 also keep up with a case as appealed to the  
10 Supreme -- our Supreme Court, it was denied,  
11 we'd have a little moment of pride. But  
12 again, it -- it's the case. It -- it's not --  
13 it's not me, it's not the lawyers. I mean, it  
14 is the litigants.

15                  CHAIRMAN CLEMMONS: Certainly. Thank  
16 you. Senator Malloy, did you have a follow up  
17 on that?

18                  SENATOR MALLOY: I did. And -- and  
19 obviously, since we -- it's hard to keep up  
20 with the Court of Appeals. You were a Family  
21 Court judge for how many years?

22                  JUDGE KONDUROS: I was there a little  
23 over six, six and a half.

24                  SENATOR MALLOY: Do you know how many  
25 times you were reversed as a Family Court

1 judge?

2 JUDGE KONDUROS: Once. Six thousand, six  
3 hundred and eighty cases a year for six years.  
4 Once.

5 CHAIRMAN CLEMMONS: Thank you.

6 JUDGE KONDUROS: Brown versus Brown.  
7 There was a lawyer on it named B. Bannister,  
8 but not the one that's present. His father,  
9 actually.

10 CHAIRMAN CLEMMONS: Thank you. Ms. Wall.

11 EXAMINATION

12 (By Ms. Wall)

13 MS. WALL: Thank you. Judge, just one  
14 quick question. I want to follow up on  
15 something I think I just heard you tell us.  
16 Do you think that consensus-building is a part  
17 of -- would be part of a good relationship  
18 with -- as a part of the Supreme Court, as  
19 there are only five people?

20 JUDGE KONDUROS: I do; I do. I think --  
21 I think all of you know, when you -- when you  
22 read and follow CNN, or whatever, United  
23 States Supreme Court cases on something that  
24 you just are so passionate about and it's 5-4,  
25 you feel -- I don't know -- whether you're the

1 five or the four, you don't feel particular  
2 good about it.

3 I -- I don't think -- Lee Corso, who  
4 wears the big head on Game Day on Saturday  
5 mornings, said something the other day that  
6 was so amazing because, you know, he says so  
7 many things that are just pure buffoonery. He  
8 said "One should never lose their credibility  
9 trying to get a job and one should never lose  
10 their credibility trying to keep a job." And  
11 I went "Good God, I'm going to quote Lee  
12 Corso." But what a -- what a good maxim.

13 So there is always a point to write a  
14 concurring opinion. There is always a point  
15 to being the dissent. You should never sell  
16 your soul for something like that. But  
17 there's certain cases when you're sitting with  
18 smart people who put as much time into it as  
19 you, when you have to -- to look at it and  
20 decide. And -- and -- and frankly, I will  
21 tell you that I find that if you work firmly  
22 and quietly with your panel, it's sometimes  
23 only a word or two that bothers you. And if  
24 they're willing to give up on that word, you  
25 can join.

1                   CHAIRMAN CLEMMONS: Thank you. Thank  
2 you. Dean Wilcox.

3                   DEAN WILCOX: Mr. Chairman, I think my  
4 substantive question has been answered, but I  
5 would just like to disclose for the record for  
6 purposes of completeness, that Judge Konduros'  
7 father-in-law, through a foundation that he  
8 manages, did fund a scholarship at the law  
9 school, that was funded back early 2014. And  
10 I just wanted that to be on the record, make  
11 sure everybody was aware of that.

12                  CHAIRMAN CLEMMONS: Thank you, Dean. The  
13 Chair recognizes Representative Bannister.

14                                   EXAMINATION

15 (By Representative Bannister)

16                  REPRESENTATIVE BANNISTER: Thank you. Mr.  
17 Chairman. Judge Konduros, when you were in  
18 Greenwood Family Court, we had, I think, the  
19 quickest time to a resolution in Family Court.  
20 If we were -- if we weren't the first fastest  
21 county to get a decision, we were second. And  
22 that fluctuates, obviously, but when you were  
23 there, we were very high on the efficiency.

24                  Looking at the Court of Appeals and the  
25 Supreme Court, it takes about three and a half

1 years, on average, to get a case from the  
2 trial court through the Supreme Court. Do you  
3 have any specific ideas if you are elected to  
4 the Supreme Court on how to speed up that  
5 process, so that litigants get a final answer,  
6 good or bad, in a more expeditious fashion?

7 JUDGE KONDUROS: I think it would be hard  
8 as low man on the totem pole, which is what  
9 I'm running for, because I can tell you my  
10 personal work ethic on that is I have  
11 deadlines set on my calendar for myself and my  
12 staff that are already set through end of June  
13 2016. There's certain dates things are due to  
14 me. There's certain dates my things are due  
15 to others. I like a draft opinion five days  
16 after oral argument, personally. Not a final  
17 one, but a draft, to start getting working.

18 A very wise lawyer taught me a long time  
19 ago, when you have a trial to not leave the  
20 courthouse parking lot until you have dictated  
21 the order that the judge may have wanted from  
22 you. Sit in your car with your file and your  
23 little machine or your pad of paper, whatever  
24 you're going to do, and -- and while the  
25 adrenaline is still running, dictate the

1 order. Because when you get back to your  
2 office, there's going to be 25 phone messages  
3 and six people waiting and the dry cleaners is  
4 going to close in five minutes and all those  
5 things, but no one is looking for you in the  
6 parking lot at the actual courthouse. And I  
7 always did that. It's better to do things  
8 now.

9 I -- I do find that because we circulate  
10 it, because we are a panel of three, it tends  
11 to be that a panel that I am on -- and I will  
12 also applaud Judge Geathers, who is always  
13 very current -- that the quicker you can get  
14 your stuff to other judges, the quicker it  
15 will come back to you, because your mind is  
16 fresh.

17 Let's say this month I've got a total of  
18 2,000 pages of appellate casework for  
19 December. If I wait to get someone an opinion  
20 until January, there are already another 2,000  
21 pages or 1500 pages in their mind. That means  
22 they have to go back and completely refresh  
23 themselves to see. So the quicker you can get  
24 it to someone doesn't mean it's a final, but  
25 that the drafts circulate. And I really think

1           that because people have waited so long, it is  
2           incumbent upon us to get our well-thought out,  
3           well-reasoned opinion out as quickly as  
4           possible. And to do that, that means a lot of  
5           hard work and a lot of late hours.

6           I have found for me, I do best if I read  
7           four hours a day, seven days a week, to -- to  
8           actually do the written work of the  
9           transcript. And then use the remaining time  
10          to research and read. But that -- that, in  
11          effect, keeps my ball rolling in a meaningful  
12          fashion. You can only read four hours of a  
13          stock distribution case pursuant to Delaware  
14          law before you gaze over. Criminal  
15          transcripts read quicker. It just depends.  
16          But if you -- if you just set yourself a pace  
17          -- and I think I would bring my personal work  
18          ethic.

19          And I don't know whether you're able to  
20          see the figures, but you -- you rarely -- I  
21          think I leave -- opinions I owe right now are  
22          from October, standing here today in November.

23                 REPRESENTATIVE BANNISTER: Thank you,  
24                 Judge.

25                 JUDGE KONDUROS: Thank you.

1                   CHAIRMAN CLEMMONS: Do you really read  
2                   2,000 pages over the course of --

3                   JUDGE KONDUROS: We all do. I mean, you  
4                   have months where it's only 800 and you have  
5                   months that it's -- but for -- you know -- and  
6                   you -- if you get lucky sometimes, there are a  
7                   hundred pages, which just feels like an  
8                   appetizer. But -- but the point is, it's just  
9                   as meaningful a hundred page -- you know the  
10                  case that really stuck with me, it was one of  
11                  the first ones I had, and -- and I think the -  
12                  - I think the entire thing with the briefs was  
13                  less than 50 pages, everything, the appellate  
14                  brief. And it's -- and it's the one that  
15                  sticks with me because two retirees who live  
16                  side-by-side with a fence between them, not a  
17                  very nice fence because we saw pictures, and  
18                  they were on a fixed income and they were not  
19                  healthy.

20                  And the one on the right had this huge  
21                  Chinaberry tree right next to the fence and it  
22                  had a huge crown. So at least half of its  
23                  leaves fell into to neighbor on the left. And  
24                  it came all the way to the Court of Appeals  
25                  because neither could afford to have the tree

1 cut down and neither was capable themselves of  
2 raking the leaves and neither was capable of  
3 paying to have the leaves raked. And they  
4 represented themselves all the way to the  
5 Court of Appeals, and isn't that marvelous?  
6 And they came, with walkers, to argue this  
7 case.

8 But is it no more important to them than,  
9 say, Abbeville Schools? And it was. And --  
10 and I feel like they feel like they had the  
11 right impression, that their government was  
12 open and available to them. And that one was  
13 50 pages, including covers. But then you  
14 could end up with something that's eight  
15 volumes and you've just got to go slow.

16 SENATOR CAMPSSEN: Which side won?

17 JUDGE KONDUROS: The -- in the interim,  
18 before we issued the report -- this is the  
19 best part -- in the interim, it got press and  
20 the city of whatever town that was went out  
21 and cut the tree down for free.

22 SENATOR CAMPSSEN: Government works.

23 JUDGE KONDUROS: It was. Beautiful  
24 thing.

25 CHAIRMAN CLEMMONS: Senator Campsen, do



1                   CHAIRMAN CLEMMONS: Over the last few  
2 years there's been a lot of discussion over  
3 who controls in South Carolina the criminal  
4 court docket. Would you care to comment on  
5 that?

6                   JUDGE KONDUROS: There's no good answer.  
7 It's almost like there's so many areas that --  
8 what is that old maxim, if you do it the same  
9 way, why do you expect a different result. I  
10 think there's two ways to look at it. One,  
11 there could be some guidance or individual  
12 docket-keeping in certain counties that run so  
13 behind.

14                   And I look at those figures almost every  
15 day because it's part of the graph. I see  
16 Family Court, Common Pleas, and I can show you  
17 were it is. If you look on "SCCourts.org,"  
18 you go under "judicial community," and then  
19 you click on "graphs." And it will show you  
20 once a week where they are, county by county,  
21 circuit by circuit. And so anybody can see  
22 them. And I can show you, if you want to,  
23 when we finish.

24                   The point is is that there's so many  
25 unusual reasons with the criminal docket, why

1 cases run long. One of them is, that our  
2 solicitors are elected and if they try cases  
3 in order, there's a chance they might lose 20  
4 in a row. And so they pick and chose and try  
5 to keep their numbers. I don't know. I've  
6 never been a solicitor. I've never been an  
7 assistant solicitor. I've prosecuted cases  
8 for DSS, but that's not criminal in any way.

9 I -- I would like us to look at it. I'm  
10 not on that committee, for the docketing  
11 committee. Chief Justice Elect Pleicones is  
12 chairman of that committee, and I'm not on  
13 that committee. Again, I share Common Pleas  
14 with Judge Newman, and then I'm chair of  
15 Family Court. But who knows, I may end up on  
16 it, because I've done so well with the others.  
17 They laughed, court reporter.

18 CHAIRMAN CLEMMONS: And do you have an  
19 opinion on who is better in position to  
20 control that docket --

21 JUDGE KONDUROS: I do not at this time.  
22 And I'm -- and I'm not ducking your question.  
23 It is not something I have studied.

24 CHAIRMAN CLEMMONS: It's okay. It's all  
25 right. That's fair. Thank you.

1 JUDGE KONDUROS: Because it's quite a --  
2 quite a question.

3 CHAIRMAN CLEMMONS: Thank you. Yes, it  
4 is. Speaking of studying, I would like a  
5 little insight as to your preparation for the  
6 part of this process, the test that was  
7 administered. How do you prepare for that  
8 test and who assists you in that preparation,  
9 if anyone?

10 JUDGE KONDUROS: I don't think anyone  
11 did, unless you -- endless cups of hot tea,  
12 made by my husband. My personal way of doing  
13 that is -- is like I said, that -- that every  
14 Friday my staff and I as a group, even if it's  
15 Skype, go over that week's advance sheets, our  
16 cases, other cases, published and unpublished,  
17 4th Circuit and the United States Supreme  
18 Court. And if there's anything else of  
19 interest in Lawyers Weekly, we talk about it.  
20 It's usually 90 minutes and we usually do it  
21 at eleven o'clock.

22 So I try to keep up constantly. And I  
23 think those of you that have ever argued know  
24 the worst question in the world is "Madam  
25 Lawyer, why did the case that came out this

1 morning affect your -- why does it -- how does  
2 it affect your case?" I mean, it's just the  
3 darkest moment in your whole life. And you  
4 have to say "I have no idea," you know, if you  
5 haven't. And if you have oral arguments on  
6 Wednesday morning, you ought to make sure it's  
7 after 9:30, so you can have a look.

8 But I -- I kept up with the advance  
9 sheets. I went back through the statutes. I  
10 read state constitution in depth. I read all  
11 the judicial advisory opinions, going back to  
12 when they started keeping them in the early  
13 '90s. I go through the court rules again,  
14 Rules of Evidence. They were -- we were  
15 specifically told it was certain areas. But I  
16 had concerns that it might be something else.  
17 It's interesting on, I think maybe the PDQ, it  
18 always talks about if you use your stationery.

19 There's a -- there's a judicial advisory  
20 opinion from '91 that says "The legislature  
21 knows you're a judge. It's okay to use your  
22 stationery." So it's always interesting that  
23 -- that still shows up on the PDQ. And I can  
24 send it to you, because I got in depth. But  
25 I'm bit of a bookworm, so I tried to do a

1 couple of hours in the evening every day to  
2 get ready for it. I -- I did well, so I think  
3 it was a wonderfully-fair test.

4 CHAIRMAN CLEMMONS: Thank you very much,  
5 Judge. Are there any other questions for  
6 Judge Konduros?

7 (No response.)

8 CHAIRMAN CLEMMONS: Hearing none, Judge,  
9 thank you so much for being here. And again,  
10 thank you for your service to South Carolina.  
11 That concludes this portion of our screening  
12 process. As you know, the record will remain  
13 open until the report is published and you may  
14 be called back at such time if the need should  
15 arise.

16 I'll remind you of the 48-hour rule and  
17 ask you to be mindful of that. Should anyone  
18 inquire with you whether or not they may or  
19 may not advocate on your behalf, we ask that  
20 you please remind them of the 48-hour rule,  
21 and explain it to them as you had explained it  
22 to us earlier.

23 We all thank you for offering and thank  
24 you for your presence here today.

25 JUDGE KONDUROS: Thank you for your

1 consideration.

2 (Candidate excused.)

3 CHAIRMAN CLEMMONS: Thank you. One more  
4 candidate. Ladies and gentlemen, we have the  
5 honor of having Harris Bruce Williams with us  
6 today. Judge Williams is seeking nomination  
7 to Seat 2 of the South Carolina Supreme Court.  
8 It's good to have you with us today, Judge.  
9 Thank you for joining us.

10 JUDGE WILLIAMS: Nice to be here. Thank  
11 you, sir.

12 CHAIRMAN CLEMMONS: Before we get to the  
13 point of swearing you in, you have someone  
14 very special with you today. Would you like  
15 to make an introduction?

16 JUDGE WILLIAMS: Absolutely. I'll  
17 introduce my wife Sharon. Think many of you  
18 know Sharon. We celebrate our 31st  
19 anniversary tomorrow.

20 CHAIRMAN CLEMMONS: Well,  
21 congratulations.

22 JUDGE WILLIAMS: This is the beginning  
23 our celebration.

24 CHAIRMAN CLEMMONS: It's good to have you  
25 with us today, Sharon. All right, Judge, if

1           you would please raise your right hand and be  
2           sworn.

3                     (The witness is sworn in.)

4           CHAIRMAN CLEMMONS: Judge Williams, have  
5           you had an opportunity to review the personal  
6           data questionnaire?

7           JUDGE WILLIAMS: Yes.

8           CHAIRMAN CLEMMONS: Is it correct?

9           JUDGE WILLIAMS: Yes, sir, I have no  
10          changes at the present time.

11          CHAIRMAN CLEMMONS: You have no changes.

12          JUDGE WILLIAMS: No, sir.

13          CHAIRMAN CLEMMONS: Hearing that, would  
14          you have any objection to making that a part  
15          of the record of your sworn testimony today?

16          JUDGE WILLIAMS: No, sir.

17          CHAIRMAN CLEMMONS: Thank you. Is there  
18          any objection by members?

19                     (No response.)

20          CHAIRMAN CLEMMONS: Hearing none, so  
21          ordered.

22                     [EXHIBIT NO. 10 - Judicial Merit  
23                     Selection Committee Personal Data  
24                     Questionnaire for The Honorable Harris Bruce  
25                     Williams, dated August 6th, 2015, admitted.]

1                   CHAIRMAN CLEMMONS: Judge, the Judicial  
2 Merit Selection Commission has thoroughly  
3 investigated your qualifications for the  
4 bench. Our inquiry has focused on the nine  
5 evaluative criteria and has included a ballot  
6 box survey, a thorough study of your  
7 application materials, verification of your  
8 compliance with state ethics laws, a search of  
9 newspaper articles in which your name appears,  
10 study of previous screenings, and a check for  
11 economic conflicts of interest.

12                   We've received no affidavits filed in  
13 opposition to your election and there are no  
14 witnesses here to testify. Do you have a  
15 brief opening statement that you'd like to  
16 share with us?

17                   JUDGE WILLIAMS: No, sir.

18                   CHAIRMAN CLEMMONS: Thank you for the  
19 brevity. If you would please turn your  
20 attention to Ms. Dean and answer any questions  
21 she may have.

22                   EXAMINATION

23 (By Ms. Dean)

24                   MS. DEAN: Thank you, Mr. Chairman and  
25 judge. Mr. Chairman and members of the

1 Commission, I have a procedural matter to take  
2 care of. Judge Williams, you have before you  
3 the sworn statement you've provided with  
4 detailed answers to over 30 questions  
5 regarding judicial conduct, statutory  
6 qualifications, office administration and  
7 temperament. Are there any amendments you  
8 would like to make to this sworn statement?

9 JUDGE WILLIAMS: No, ma'am.

10 MS. DEAN: At this time, Mr. Chairman, I  
11 would like to ask that Judge Williams' sworn  
12 statement be entered as an exhibit into the  
13 hearing record.

14 CHAIRMAN CLEMMONS: Thank you, Ms. Dean.  
15 Is there any objection?

16 (No response.)

17 CHAIRMAN CLEMMONS: Hearing none, so  
18 ordered.

19 [EXHIBIT NO. 11 - Judicial Merit  
20 Selection Committee Sworn Statement of The  
21 Honorable Harris Bruce Williams, dated August  
22 6th, 2015, admitted.]

23 MS. DEAN: Thank you. One final  
24 procedural matter, I note for the record that  
25 based on the testimony contained in the

1 candidate's PDQ, which has been included in  
2 the record, with the candidate's consent,  
3 Judge Williams meets the statutory  
4 requirements for this position regarding age,  
5 residence and years of practice.

6 Judge Williams, why do you now want to  
7 serve as a Supreme Court justice? And how do  
8 you feel your legal and professional  
9 experience thus far will assist you to being  
10 an effective judge?

11 JUDGE WILLIAMS: Before I answer that, I  
12 will do -- I'll have an opening statement. I  
13 do want to thank the staff for their courtesy  
14 and kindness over prior months. Ms. Brogdon  
15 is not here; she was most kind during that.  
16 She was working with me. And now, Ms. Dean,  
17 it is always a pleasure.

18 But to answer your question as to the  
19 why. I think it's another opportunity for me  
20 to contribute and hopefully use my experience  
21 to make some contributions that may benefit  
22 what we do. Certainly the first priority of  
23 what I do as a judge is to -- to hear cases,  
24 to make every effort to get it right. That's  
25 primarily the obligation. And I guess that's

1 my agenda, day in and day out, and that's what  
2 I should be doing.

3 At the same time when I'm doing that, I  
4 have to be aware that the goal is when I do  
5 that to do it fairly. And I think there's  
6 more to all this too, in that we -- we have  
7 changes coming to the court in the sense that  
8 new members will start, changes with the chief  
9 justice, and I also think there's an  
10 opportunity maybe for us to look at maybe how  
11 we do some things, the tone and tenor of the  
12 court and a judicial system and how we are  
13 doing business. And hopefully I can  
14 contribute something to that.

15 You know, we've spent a number of years  
16 focused on technology, which we needed to do.  
17 It's been a great success. At the same time,  
18 I think hopefully -- and maybe I can bring  
19 this to the table a little bit -- it's time to  
20 look at and focus on what we all know is  
21 really the most important thing about the  
22 court system. And that's the people who come  
23 before us in our courts.

24 And I think we need to spend some time  
25 looking at that, so that we know that every

1 person who walks in the courtroom, when they  
2 leave there, they are convinced that they were  
3 -- that they had a fair day in court. They  
4 were treated properly, with respect, with  
5 dignity, no matter who they are, where they're  
6 from, what ethnicity, what race; it doesn't  
7 matter.

8 But to focus on -- not that we don't  
9 focus on it now, but I think we have spent  
10 lots of time on technology, and that has given  
11 us lots of good information. It has certainly  
12 helped with efficiency and those -- that is  
13 certainly important.

14 But at the same time, if you ask folks  
15 about the court system, what they think, their  
16 answers are probably not going to be that --  
17 that we have great statistics. They're going  
18 to remember what happened in the courtroom.  
19 They're going to remember the way they were  
20 treated. And I think it starts with -- with  
21 the judges. I think we can make great  
22 contributions in improving that.

23 When I've been here over the years,  
24 that's always been an issue, looking at the  
25 judicial temperament. Again, judicial manner

1 in which the judges handle things in the  
2 courtroom, the way that lawyers deal with each  
3 other. And that's something that's  
4 interesting to me over the years, with you  
5 saying with my experience, that's probably the  
6 -- my favorite CLE to participate in, and do  
7 several of those a year. It has to do with  
8 not just stability, but the idea of  
9 collegiality. So I bring that to the table as  
10 well.

11 The idea of collegiality, the fact of  
12 talking to each other again. I did a CLE with  
13 Judge Duffy not long ago, with first year  
14 students at the law school. And he talks  
15 about the relationships among the lawyers.  
16 Well, we need to encourage relationships  
17 between the lawyers, and that will benefit  
18 everyone.

19 The -- we don't talk to each other  
20 enough. With technology, we are great with  
21 iPhones and emails and iPads, and that -- that  
22 is -- that is very important. But at the same  
23 time, we need to make certain we have those  
24 relationships. And my suggestion to the  
25 class was to put your phone down and talk to

1 the folks next to you, because long-term,  
2 that's going to make a huge difference in the  
3 practice of law. That lawyers need to have a  
4 relationship, because that's going to benefit  
5 their clients, it's going to benefit the  
6 system. And so it's just the idea of focusing  
7 on that tone, tenor, demeanor, temperament,  
8 amongst the lawyers or the judges that -- that  
9 we -- that we make every effort, take every  
10 opportunity to try to improve things.

11 And I don't have all the answers, so my -  
12 - my thought would be to help do these things.  
13 We would also look at who -- and who might  
14 contribute to this. We got a lot of great  
15 folks, a lot of great ideas. We got 130  
16 judges across the state, state judges, plus  
17 all the magistrates. We've got 9,000-plus  
18 lawyers. We have all the citizens across the  
19 state who could make contributions and help us  
20 look at this. And I think we've done some of  
21 that, but I think it's something we ought to  
22 do more of, that we reach out, we be more  
23 inclusive. We do a -- a broader look at  
24 things and be collaborative in what we do as  
25 far as trying to -- to look at the issues I'm

1 talking about.

2 I think if you do that, you get lots of  
3 things done. I look at the interests that  
4 I've had, and you ask about my experience in  
5 alternative courts. The way alternative  
6 courts came about was through lots of  
7 collaboration with others, to have drug court,  
8 for example. That's a result of working with  
9 the solicitors, with defense lawyers, with the  
10 community.

11 For example, just in the drug court that  
12 I've been in in Columbia, working with Mr.  
13 McLawhorn with the Urban League, with working  
14 with various pastors in the community to get  
15 mentors for young people. Again, just the way  
16 of looking at things where there is this  
17 collaboration, it is still all about the --  
18 the -- the court system, judiciary, what we  
19 do, how we do it. But I think again, ways to  
20 do it.

21 So in looking -- example, as I said, drug  
22 courts, I say 13 years as a practitioner, four  
23 years as associate county judge while I was  
24 still practicing law, nine years on the Family  
25 Court, 11 years in the Court of Appeals, 18 --

1 I guess 19 years of presiding over a juvenile  
2 drug court at the end of January, presiding  
3 over adult drug court for three years during  
4 that time. I hope that those experiences --  
5 experiences will help me in making a  
6 contribution. And contribution is important  
7 to our judiciary.

8 The other experience which I hope would  
9 help me is when I was a Family Court judge, I  
10 was elected to be president of their  
11 association. I was chair of the advisory  
12 committee of the chief justice. We were  
13 engaged in looking at how we did things in  
14 Family Court. We tried to make improvements  
15 along the way.

16 I know one time -- again sort of an  
17 example of how I think when you reach out, you  
18 talk and try to look at issues, you can solve  
19 some problems. I have the opportunity to work  
20 with Senator Martin and looking at guardian ad  
21 litem issues, which was a very tough, very  
22 difficult issue at the time. And I think in  
23 the end, legislation was -- was drafted by  
24 Senator Martin. It was passed. And I think  
25 by having that exchange, that discussion

1           amongst all those who participated in the  
2           system, it appears, I would say, that that  
3           particular piece of legislation withstood the  
4           test of time. Senator Martin, it is still  
5           something that everyone looks at, but it was  
6           done through that discussion. I think that's  
7           again an example of how things can be done.

8           So I hope those experiences help me in  
9           this. My experience in drug court,  
10          alternative courts, as I said, I'm involved  
11          with the national association and hopefully  
12          that helped in -- in our state. There are a  
13          number of us who have been involved with drug  
14          courts, and two of the originals are left,  
15          Judge Keesley and myself, so we have tried to  
16          stay involved, and I guess we're the last of  
17          the originals.

18          I guess the last thing I bring to the  
19          table is that I try to participate with the  
20          Bar, participate with law school. And in the  
21          end, I kind of think that's a healthy thing  
22          for judges to do and the Bar be engaged as  
23          well. So I'm hoping those experiences would  
24          help me make some contribution to the -- to  
25          the court.

1 MS. DEAN: Thank you, Judge. Judge  
2 Williams, are there any areas, including  
3 substantive or subjective areas of the law,  
4 that you would need to additionally prepare  
5 for in order to serve as a judge? And how you  
6 handle that additional preparation?

7 JUDGE WILLIAMS: I think I do that every  
8 day. I need help every day what I do. It's a  
9 -- I think I've had a broad experience in the  
10 practice of law as a general practitioner and  
11 did lots of different types of cases. The  
12 fact that I have served on the Family Court  
13 for nine years and been on the Court of  
14 Appeals, which reminds me of practicing law  
15 again because we have so many different issues  
16 and so many different topics. So I -- I think  
17 that -- I'm always trying to stay up-to-date  
18 and aware and -- and review. So I think  
19 that's just the -- the nature of -- of an  
20 appellate judge in particular, of having  
21 something new, that you see all the time. The  
22 truth is in Family Court I always thought  
23 there was something new all the time, which is  
24 why I enjoyed it so much. It is the same sort  
25 of thing there as well. But that is something

1 I think that we all do on a daily basis and  
2 need to do.

3 MS. DEAN: Thank you, Judge. Judge  
4 Williams, although you addressed this in your  
5 sworn affidavit, could you please explain to  
6 the members of the Commission what you think  
7 is the appropriate demeanor of a judge?

8 JUDGE WILLIAMS: It would be the same  
9 demeanor that we have every day. I think  
10 walking the halls at work or walking in the  
11 neighborhood at home, I think ultimately, if I  
12 look at a judge and just a person in general,  
13 hopefully that we are patient, that we are  
14 humble, that we reflect, we're thoughtful,  
15 attentive to what we do, caring. Consistent  
16 is another issue that may be more so for a  
17 judge, but maybe my wife would say be more  
18 consistent too; I don't know. But I think  
19 being consistent is something that is an  
20 important trait.

21 Ultimately, a really good listener. I  
22 think all those are traits that a judge should  
23 have and -- and -- and then the judge should  
24 think about every day, how do I get better at  
25 doing it, what do I do to make -- to do a

1 better job? Try to use those -- those traits  
2 to make certain to remember them in court  
3 especially.

4 MS. DEAN: Thank you, Judge. Judge  
5 Williams, what suggestions would you offer for  
6 improving the backlog of cases on the docket?

7 JUDGE WILLIAMS: What -- what dockets, I  
8 guess, are we referring to when we say  
9 dockets? It's --

10 MS. DEAN: Well, we've been asking that  
11 rather broadly, as the Supreme Court would  
12 have their own docket or influencing over  
13 dockets.

14 JUDGE WILLIAMS: Well, I guess I'll -- I  
15 look back at my practical experience and say  
16 I'll say Family Court and I'll start there,  
17 because that's always a docket that's always  
18 been asked about. Even when I was running for  
19 Court of Appeals, I was asked about the Family  
20 Court docket, how do we -- how do we improve  
21 that, how do we work on it.

22 Well, we -- we have a -- a new system  
23 that's been in place, and I guess we'll give  
24 that time to -- to -- to work and -- and see  
25 if that helps improve it. Certainly, with

1 certain deadlines, it -- it improves looking  
2 at the numbers. But I -- I guess I ought to  
3 go back and look and -- and see how it really  
4 impacts people. That is one concern that I  
5 have when we set certain time lines is the  
6 impacts on litigants there.

7 And listening to lawyers, that's  
8 something that -- that while we have new rules  
9 in place, again I'm wanting to say let's look  
10 and see, is that still the best way? That we  
11 don't just get set, that's the only way. And  
12 we're hoping at some point that that issue  
13 might be revisited for the Family Courts,  
14 because you will have some practitioners, some  
15 judges say that one size doesn't always fit  
16 all, fit everything. And -- but this -- but  
17 it may be that as time goes by, everyone  
18 adjusts. Those concerns from lawyers and --  
19 and some judges that maybe that will -- will  
20 lessen. But I guess I still think we always  
21 should be looking at how we do it better.

22 In -- in that regard, the way in Family  
23 Court that you could do it, certainly the  
24 judges being more engaged in the process. The  
25 new one, the new process takes the judge out

1 of it. I am one that I think the judge needs  
2 to be engaged in all this. When -- when I was  
3 engaged in Family Court Richland County, for  
4 example, the judge is involved in pre-trials.  
5 We have the most current dockets in the state.

6 My -- my favorite story is a lawyer who  
7 came in and said "I have to have a trial right  
8 now. This is the end of November." I said  
9 "Absolutely." Gave him the first three days  
10 of -- of January. He said "That's a little  
11 too quick." I take that as a compliment to  
12 Judge Riddle and Judge Strom and what we were  
13 trying to accomplish. But again, that was  
14 because judges were involved. We weren't  
15 using arbitrary dates or numbers. It was  
16 looking and trying to help the lawyers  
17 facilitate the case, looking at their needs to  
18 get them in.

19 And then the way I always start the pre-  
20 trials, "What can I do to help you? You know,  
21 what can I do to help you to get the case  
22 ready to help your clients?" And the pre-  
23 trial method for us to help the lawyers or the  
24 clients and other things to get things done.  
25 So that -- that's an example.

1           Spending more time is always helpful.  
2           But at the same time, I think we want to look  
3           and maybe define what a backlog is. And if  
4           it's strictly time, then it takes time to  
5           resolve things. And saying that, I'm saying  
6           that that means we need to spend more time to  
7           resolve those. But the method in which we do  
8           it -- and again I'm back to a solution of,  
9           especially in the trial courts, of involving  
10          the judge and being accountable. You know,  
11          once a judge touches it -- and I think there's  
12          ways to accomplish that -- once a judge  
13          touches it, it's -- it's up to them to kind of  
14          move it along.

15          The -- the -- sometimes the triggering  
16          mechanism to get the -- get litigants in the  
17          court, that's delayed. And then I think there  
18          are -- there are ways you could put certain  
19          time lines in place where at least when the  
20          judge touches it after a certain time frame,  
21          after the initial discovery, whether it's four  
22          months, six months, whatever it is. I believe  
23          once you have a judge touch it so that the  
24          judge feels that responsibility to help the  
25          case move along, help the lawyers move the

1 case along. It's really a help to the  
2 lawyers, as -- as I see it.

3 I think the Supreme Court has done --  
4 they've got some new processes in -- in place.  
5 They're certainly taking -- taking less cases  
6 from us on when we think that -- when I first  
7 started, there were certain criteria they  
8 would use to take a case, and that appears to  
9 have changed, best we can tell, because when  
10 they are being requested to take certain they  
11 are not -- not as inclined to do it, which is  
12 fine. But there has been a change too. I  
13 think we just help them to facilitate and  
14 resolve some cases. Hope that's the answer.

15 MS. DEAN: Thank you, Judge. Now we're  
16 moving to the ballot box question. Judge  
17 Williams, the Commission received 506 ballot  
18 box surveys regarding you, with 58 additional  
19 comments. The ballot box surveys, for  
20 example, contained the following positive  
21 comments regarding your temperament, work  
22 ethic and academic ability. Four of the  
23 written comments expressed concerns, two of  
24 which indicate a concern that you may have  
25 taken a pro-business position publically.

1           What response would you offer to this concern?

2                   JUDGE WILLIAMS: I think Ms. Brogdon  
3           raised this issue, she indicated that someone  
4           had said or I made the announcement in my  
5           candidacy, I referenced to being pro-business.  
6           One other said I was making an announcement  
7           that I was running. I think I sent letters  
8           into -- to the legislature, excluding this  
9           Commission as I recall, ask -- indicated my  
10          intention to -- to pursue a seat on the  
11          Supreme Court.

12                   My only response to that is I don't -- I  
13          didn't do that. And I think what I have --  
14          where I think that comes from is I have --  
15          have offered before for this, and there were a  
16          couple of groups or study committees who did  
17          an analysis of -- of the candidates. And what  
18          I recall was that as a result of their  
19          analysis, they thought I would be pro-  
20          business.

21                   Well, the basis for that is they thought  
22          I would be fair. Well, if that's the reason,  
23          they got me, because I think I do try to be  
24          fair, everything that I do. And if that is a  
25          pro-business, I also think that is pro- any

1 party you want in the courtroom, whether it's  
2 a husband and wife in Family Court, plaintiff  
3 defendant in Civil Court, the appellate and  
4 respondent in -- in Appellate Court is --  
5 that's what I do every day, and that's what I  
6 try to do every day. Then if that is  
7 something that appears to be pro-something, in  
8 the sense I'm fair, yes.

9 But a judge can't be pro-anyone. If --  
10 if we're pro-something, that -- that -- that  
11 puts our system at risk. We lose credibility  
12 if we are pro a particular group. You end up  
13 offending someone, potentially offending  
14 someone. It appears that they could be bias,  
15 and that's not what we want. That's not what  
16 we do. That's not what I think I've done.

17 So I recall from earlier involvement,  
18 again analysis, but -- which I take as a  
19 compliment, because I think that's what the  
20 lawyers have said over the years, whether it's  
21 Family Court or Court of Appeals, the lawyers  
22 have been very gracious to me, in that they  
23 indicate they believe me to be fair and that's  
24 what I try to do every day. So I don't think  
25 that I am pro any particular group personally,

1 because I know that would be harmful to the  
2 credibility of the court, credibility of the  
3 system.

4 MS. DEAN: Thank you, Judge. Now I'm  
5 moving to housekeeping issues. Have you  
6 sought or received the pledge of any  
7 legislator prior to this date?

8 JUDGE WILLIAMS: No, ma'am.

9 MS. DEAN: Have you sought or have you  
10 been offered a conditional pledge of support  
11 of any legislator pending the outcome of your  
12 screening?

13 JUDGE WILLIAMS: No, ma'am.

14 MS. DEAN: Have you asked any third  
15 parties to contact members of the General  
16 Assembly on your behalf?

17 JUDGE WILLIAMS: No, ma'am.

18 MS. DEAN: Are you aware of anyone  
19 attempting to intervene in any part of the  
20 process on your behalf?

21 JUDGE WILLIAMS: No, ma'am. And I -- as  
22 a practical matter, I know I have expressed my  
23 interest to folks. And I get asked that  
24 question. And my practice is to explain the  
25 rule to them and ask them not to contact

1           legislators or -- or this Commission in  
2           particular. But I hope they haven't. But I  
3           do explain the rules to every person that I  
4           talk to, because they ask me what they can do,  
5           and then I explain the rules to them.

6           MS. DEAN: Thank you. Have you contacted  
7           any members of the Commission?

8           JUDGE WILLIAMS: No. No, ma'am. I mean,  
9           I've seen folks in the hallway when I've been  
10          over here in session and at times I've had a  
11          discussion with Senator Malloy about drug  
12          court. I've seen other folks at various  
13          social events. But contact the Commission in  
14          the sense of an affirmative contact regarding  
15          my candidacy, no. Have I seen members of the  
16          Commission? Yes, ma'am.

17          MS. DEAN: Do you understand that you are  
18          prohibited from seeking a pledge or commitment  
19          until 48 hours after the formal release of the  
20          Commission's report?

21          JUDGE WILLIAMS: Yes, ma'am.

22          MS. DEAN: Have you reviewed the  
23          Commission's guidelines on pledging?

24          JUDGE WILLIAMS: Yes, ma'am.

25          MS. DEAN: As a follow up, are you aware

1 of the penalties for violating the pledging  
2 rules? That is, it is a misdemeanor, and upon  
3 conviction, the violator must be fined not  
4 more than \$1,000 or imprisoned not more than  
5 90 days?

6 JUDGE WILLIAMS: Yes, ma'am.

7 MS. DEAN: I would note that the Midlands  
8 Citizens Committee found Judge Williams  
9 qualified in the criteria of constitutional  
10 qualifications, physical health and mental  
11 stability. The Committee found him well-  
12 qualified in the criteria of ethical fitness,  
13 professional and academic ability, character,  
14 reputation, experience and judicial  
15 temperament.

16 The committee stated in summary,  
17 "Williams is an outstanding candidate for this  
18 position and would be a superior justice of  
19 the South Carolina Supreme Court." I would  
20 just note for the record that any concerns  
21 raised during the investigation regarding the  
22 candidate were incorporated into the  
23 questioning today. Mr. Chairman, I have no  
24 further questions.

25 CHAIRMAN CLEMMONS: Thank you, Ms. Dean.

1 Are there any questions? Yes, Senator Martin.

2 EXAMINATION

3 (By Senator Martin)

4 SENATOR MARTIN: Thank you, Mr. Chairman.  
5 Judge Williams, appreciate you being here  
6 today, you and Ms. Williams, and it's good to  
7 see you. Thank you for your service to our  
8 state, going back to the days on the Family  
9 Court. And I appreciate your mentioning our  
10 previous working together on the guardian ad  
11 litem legislation. That was very important  
12 and hope it's been helpful to you, that area  
13 of the law here in South Carolina. Appreciate  
14 all that you've done.

15 I had a couple questions that I wanted to  
16 ask, that I've asked all the candidates today  
17 regarding the broader issue of separation of  
18 powers, as it relates to the division of the  
19 three branches of government, the role that  
20 the judiciary plays in that area. And I  
21 wanted to specifically ask -- you've shared  
22 some thoughts with us regarding how you view  
23 the role of the judiciary regarding the  
24 broader question, separation of powers as it  
25 relates to the legislature's role in setting

1 public policy, the judiciary and the -- the  
2 executive's role in administering public  
3 policy, and this overall issue of judicial  
4 restraint, as it relates to, you know,  
5 sticking with calling balls and strikes versus  
6 weighing out in the public policy. Broad  
7 question.

8 JUDGE WILLIAMS: It is a broad question,  
9 which -- which I think a relevant answer,  
10 versus a more specific question, and so I'll  
11 do my best to answer. I -- I think that it's  
12 clear to me that the duty of the judge,  
13 appellate judge in particular, is to decide  
14 the case that's presented. And that is to me  
15 indicates a narrow focus, which that's the  
16 issue before the court, is to help decide the  
17 case that is presented. And to do that, it is  
18 to interpret the law.

19 It is -- it's the court role to indicate,  
20 interpret, say what the law is. It is the  
21 duty of the legislature to legislate. And  
22 it's not the court's role to legislate.  
23 Executive branch is to execute. And I think  
24 that it's important that all branches stay  
25 within the bounds that are there.

1           I think that there is a concern when --  
2           whether it's the judicial branch or any branch  
3           goes outside those bounds. What it will do is  
4           call into question what we do and how we do  
5           it. It will call into question the  
6           credibility of what we do. If you go outside  
7           the bounds in -- in every instance, or as you  
8           say, where there is a lack of judicial  
9           restraint. And you don't stay and -- and --  
10          and more narrowly focused on answering the  
11          question that's presented. That if you do  
12          that and you -- it is perceived that that's  
13          what is being done, that credibility is lost  
14          and then when there is potentially a stepping  
15          outside of bounds where the court should step  
16          in, when it is clear that that's the case, and  
17          to interpret, you're going to lose credibility  
18          when it's done. So I -- I guess the court has  
19          to be very cautious.

20          And it's clear to me that we do have very  
21          specific roles, that if those roles are  
22          blurred and there is not appropriate judicial  
23          restraint, then we do risk the -- either the  
24          loss of legitimacy for what we do, without  
25          lack of credibility, I referred to. So it is,

1           answering your question, that -- I guess that  
2           is my philosophy, is that -- that -- that I  
3           clearly recognize that we all have specific  
4           roles and that we need to stay within bounds  
5           of those roles, or we stand to lose a lot of  
6           credibility or legitimacy of what we do.

7           SENATOR MARTIN: I'm going to ask you  
8           along those lines, you know, as a new member  
9           of the court, if you were to encounter a  
10          situation where you believe that a previous  
11          decision, particularly a decision that was  
12          narrowly decided, maybe went outside the  
13          scope, that you would agree with or believe  
14          appropriate, because of the guiding principle  
15          that you view the rightful role of the Supreme  
16          Court, how would you in a subsequent case or  
17          the -- it's not the same case, but a  
18          subsequent case comes up, how would you -- how  
19          would you tend to view that?

20          Would you believe that -- would you tend  
21          to hold more to the line, well previous  
22          holding of the court would guide me in that  
23          respect, or I would stare decisis, or call it  
24          the way you see it?

25          JUDGE WILLIAMS: Well, I -- I have to

1 begin with saying, stare decisis is a -- is  
2 certainly -- has been the guiding light  
3 historically for courts. And courts -- again  
4 when I said earlier about what judges do in  
5 trying to be consistent, and that is helpful  
6 to not only the lawyers, but the litigants to  
7 have that consistency.

8 And historically when you review a case,  
9 you go back and look at the precedent. You  
10 will look at other issues to help -- or other  
11 guidance, whether it be statutory or others to  
12 help make decisions.

13 So that -- that -- in answer to your  
14 question, I think, as to what I would do in a  
15 particular case where you have been very  
16 general as to my view of whether I'm going to  
17 follow precedent or not, or whether I'm going  
18 to reach out and do what I feel is right, I  
19 think is getting close to looking at what I  
20 personally believe. I -- I hope an  
21 explanation of the role of a court, and being  
22 clear about the role of a court is -- is what  
23 -- is what I would do.

24 Understanding that is -- again, because  
25 of my concern regarding the credibility and

1           legitimacy of what we do, that is certainly  
2           something that would have to be a strong  
3           consideration, versus saying "I'm going to  
4           pick one -- one over the other," again a  
5           hypothetical.

6           SENATOR MARTIN:    Sure.

7           JUDGE WILLIAMS:    I guess I -- I'm  
8           cautious to begin to answer that, versus just  
9           more of me versus what -- what I think judges  
10          should do.

11          SENATOR MARTIN:   Doesn't that also point  
12          to -- you know, particularly if it's a  
13          decision that was a close call, say a three-  
14          two decision involving a public policy  
15          question that interpretation qualitative  
16          standard or constitution, just a hypothetical,  
17          but doesn't that also point to the -- to the  
18          need for the court to reach a consensus, if  
19          it's going -- if it's going to wade off into  
20          that, as opposed to being so split?  Do you  
21          have an opinion about that?

22          JUDGE WILLIAMS:    I think it is always  
23          helpful when a court can reach a consensus and  
24          -- and be as unanimous as they can be.  I  
25          think that is a good indicator to lawyers and

1 to the public as to what -- what the law is.  
2 And ultimately in doing that, the goal is  
3 still to apply the law and doing what you  
4 asked earlier. My objective is to apply the  
5 law. To look at it, apply the law, give it  
6 it's clear meaning, and to apply it. That's  
7 what I would do.

8 So to answer your question, yes, I think  
9 it is always helpful to do that. But  
10 certainly there is something that I disagree  
11 with, and it would -- it is -- because I do  
12 see the importance of -- of that consensus you  
13 referred to. But I also think it's important  
14 that when there is an issue that -- that when  
15 I look at the law, that if I interpret it  
16 differently, then I would express that. But  
17 again, that goes back again to looking at how  
18 the -- the court works and as far as the  
19 exchange of ideas and thoughts. Before I get  
20 to that, me deciding I'm going to do this.  
21 Certainly I want to know what everyone else is  
22 thinking and why, and try to understand that.

23 But ultimately, I'm -- I'm going to have  
24 to decide and do what I think is the right  
25 thing to do. And so my ultimate decision is -

1           - will be my -- using what I indicated to be  
2           my philosophy of how I look to apply the law,  
3           interpret the law and then to do what I think  
4           is the right thing to do.

5           SENATOR MARTIN: Thank you very much.

6           SENATOR CAMPSSEN: Mr. Chairman.

7           CHAIRMAN CLEMMONS: Yes, Senator Campsen.

8                           EXAMINATION

9           (By Senator Campsen)

10           SENATOR CAMPSSEN: Thank you. Thank you,  
11           Judge, for your service and your willingness  
12           to serve in another higher capacity. I also  
13           have some questions I've asked all the  
14           candidates. First being, if the court finds a  
15           constitutional violation by another branch of  
16           government, may the court then prescribe the  
17           manner in which that violation must be  
18           remedied?

19           JUDGE WILLIAMS: If you're asking that  
20           the court ought to go and based on finding of  
21           that constitutional violation rewrite the law  
22           for the legislative branch, I don't think  
23           that's the purpose. I don't think that your  
24           --

25           SENATOR CAMPSSEN: I'm not talking about

1           rewriting. I'm talking about prescribing what  
2           they must do in order to remedy the violation.

3                   JUDGE WILLIAMS: I think it's the court's  
4           role -- it's a very narrow role -- is to  
5           interpret the law. If there's a violation, to  
6           acknowledge the violation occurred. Again, I  
7           don't think it's the court's role to then  
8           legislate whether to prescribe -- is  
9           prescribing a form of legislation? I think  
10          that's where we have to be -- you have to be  
11          cautious because that, again, may blur the  
12          lines, if that's the case. An analysis of the  
13          issue is to determine whether or not there's a  
14          violation and apply the law and acknowledge  
15          that.

16                   My concern would be anything past that  
17          could be legislative, and that's your role as  
18          a senator or a house member. That's not the  
19          court's role. And that would be my concern.  
20          Again, if the court begins to legislate, or  
21          its perception of legislating, and that's  
22          where we start to run a great risk of losing  
23          our credibility and legitimacy, those two  
24          things, if we begin to do that.

25                   So I guess I -- I struggle a little bit

1 with the language you're using, but still, I'm  
2 back to looking at how far our courts should  
3 go. And again my thought is, there has to be  
4 judicial restraint, because if we don't have  
5 that, then we go too far. I think that  
6 there's harm to our system.

7 SENATOR CAMPSEN: Thank you. What is a  
8 nonjusticiable political question?

9 JUDGE WILLIAMS: Is that an issue you  
10 want us to resolve or not resolve? If it's  
11 nonjusticiable, I -- I -- there's no -- no  
12 issue for the court, I -- I -- I guess is what  
13 you're asking. It's nothing that's before the  
14 court --

15 SENATOR CAMPSEN: How do you know when  
16 you see one? How do you know --

17 JUDGE WILLIAMS: Maybe the answer to the  
18 question is -- is -- is -- I'll be honest, I'm  
19 struggling with that -- the -- if I sat back  
20 and thought about --

21 SENATOR CAMPSEN: There's a political  
22 question doctrine in the constitutional law is  
23 very well established concept, political  
24 question doctrine.

25 JUDGE WILLIAMS: In -- in -- and again,

1 if you ask me if I'm a -- a -- a scholar of  
2 the constitution, I'm not going to stand here  
3 and begin to say that I have sat and thought  
4 about that particular issue. I wouldn't do  
5 that. If it is -- if, again, it is an  
6 appropriate question presented to the court, I  
7 think the court would answer it. If it is not  
8 an appropriate question -- and just, again,  
9 trying to -- the question itself answer, if  
10 it's a political question versus a  
11 nonjusticiable, it's not something the court  
12 would be answering. But again said that I've  
13 gone back and -- and reviewed and have an  
14 answer for you, I'm not going to try to do  
15 that or I just -- I wouldn't begin to attempt  
16 it.

17 SENATOR CAMPSEN: Do you think that it's  
18 possible that our constitution contains  
19 undiscovered and unarticulated fundamental  
20 rights that court may discover in the future?  
21 Are there undiscovered and unarticulated  
22 fundamental constitutional rights yet to be  
23 discovered in the current constitution?

24 JUDGE WILLIAMS: In answering your  
25 question, again, in looking through all the

1 court, is to present the issue. And if that's  
2 the question presented, as an issue that's  
3 been presented to the court, that there is  
4 this fundamental right that's not to be  
5 discovered, as yet -- yet to be discovered, if  
6 the court's going to create, I think the  
7 document speaks for -- for itself, and we are  
8 called upon at times to interpret. But again,  
9 it has to be -- it has to be clear on its  
10 face.

11 To go -- and as you say, I think what  
12 you're asking is are there new rights to be  
13 created. Again, I think that the idea of  
14 judicial restraint is to look at the issue and  
15 resolve the question, is to -- to go and to  
16 create new rights, new -- in essence I think  
17 what you're saying is is it the same as  
18 legislating. I don't think that's the role of  
19 the court.

20 SENATOR CAMPSEN: Thank you. If a  
21 justice has advocated for a particular outcome  
22 that a party before the court is seeking, does  
23 he or she have a duty to recuse himself? If a  
24 justice has advocated for a particular outcome  
25 that a party before the court is seeking, does

1 the justice have a duty to recuse himself?

2 JUDGE WILLIAMS: When you say, again,  
3 "advocates," it's something that you may have  
4 something you don't disagree with? Or when  
5 you say "advocating," is that advocating  
6 publically? Taking the position publically?

7 SENATOR CAMPSEN: Publically-advocated  
8 for an outcome that has come before the court,  
9 that one of the parties is seeking.

10 JUDGE WILLIAMS: Yeah, I think that I  
11 indicated earlier with -- in my comments, is  
12 that when judges take -- take positions being  
13 pro or against something, that's where we have  
14 to be cautious, which is why I've always been  
15 very cautious about taking positions that --  
16 that could -- either the position, as you say  
17 here, or it could be position that you  
18 advocate for, that it could create that sense  
19 of bias or it could cause great concern.

20 It could -- it could also create -- if  
21 you advocate for something or someone, again,  
22 create the perception of bias. So that would  
23 cause me great concern to do that, and I don't  
24 think that's appropriate, which is why my  
25 practice has been not to advocate certain

1 positions or advocate for someone in -- in --  
2 in the sense I think you're talking about.

3 So I think if you are advocating a  
4 particular position, my -- my -- my gut  
5 reaction is that I would think that would be  
6 an appropriate time to recuse myself if I had  
7 known that. Hopefully I wouldn't have done  
8 that to begin with, because I think, again,  
9 that's an issue that, as I indicated earlier,  
10 that we must be cautious of because if we do  
11 that, there is that idea of bias that we  
12 presented either for someone or against  
13 someone or some thing or against some -- some  
14 -- something else. And -- and I think that's  
15 where we have to be cautious, not to do -- not  
16 to be advocate -- again, specific position.

17 But at times when there are, say,  
18 advocating for improvements to the court or I  
19 think there are certain things you can  
20 advocate for, but not necessarily certain --

21 SENATOR CAMPSEN: I'm talking about --

22 JUDGE WILLIAMS: -- issues.

23 SENATOR CAMPSEN: -- improvements to the  
24 court would not be an issue in the case the  
25 court is hearing, then one of its -- one of

1 the parties is pursuing --

2 JUDGE WILLIAMS: Oh, I'm -- I'm --

3 SENATOR CAMPSSEN: I'm talking about --

4 I'm talking about something that one of the  
5 parties is seeking and advocating for justice  
6 has advocated for that same outcome  
7 publically, must they recuse themselves.

8 JUDGE WILLIAMS: Yes, sir.

9 SENATOR CAMPSSEN: Thank you. That's all,  
10 Mr. Chairman.

11 CHAIRMAN CLEMMONS: Thank you, Senator  
12 Campsen. Senator Malloy is recognized.

13 EXAMINATION

14 (By Senator Malloy)

15 SENATOR MALLOY: Thank you, Mr. Chairman.  
16 Judge Williams, obviously, has been very much  
17 involved with the drug court for a period of  
18 time, as has his colleague, Judge Keesley.  
19 They have worked together for a long period of  
20 time, as Judge Keesley served on our  
21 Sentencing Commission as well. So we've had  
22 lots of conversation as it relates to -- to  
23 that. I wanted to mention that. I guess I've  
24 known him whenever he played basketball back  
25 in the early '80s, before his knees went --

1           went bad; is that right?

2                   JUDGE WILLIAMS: Lots of things started  
3 going bad. I was -- I was a short, husky  
4 player, who could shoot for a while.

5                   SENATOR MALLOY: He's a lot thinner now.

6                   JUDGE WILLIAMS: Little bit.

7                   SENATOR MALLOY: Judge, what is the --  
8 one of the things we have been asking  
9 everybody else and we've been going through  
10 the Westlaw and we think that the number is  
11 higher than the actual numbers should be, but  
12 it shows since 2007, there was 65 appeals that  
13 you may have been involved in, and that it was  
14 reversed 30 times. I guess they've explained  
15 it in the prior hearings, that's not just your  
16 individual actual record, correct?

17                   JUDGE WILLIAMS: That -- that's my  
18 understanding. But I have not kept count over  
19 the years. But that's my understanding, yes,  
20 sir.

21                   SENATOR MALLOY: You were a Family Court  
22 judge for how many years?

23                   JUDGE WILLIAMS: Nine years.

24                   SENATOR MALLOY: How many times were you  
25 reversed as a Family Court judge?

1 JUDGE WILLIAMS: One. And I -- it was a  
2 three-way reversal. It was a jurisdiction  
3 issue that Judge Riddle had already ruled on.  
4 Since she was a judge at the same level, I was  
5 a chief -- chief judge for administrative  
6 purposes, I agreed with her. When the trial  
7 judge heard it, after he heard it, he agreed.  
8 The only problem is, the Supreme Court  
9 disagreed. So that was the -- that was the  
10 one issue reversal. I was very fortunate to  
11 have nine years in the Family Court, and that  
12 was my reversal, I think, yes, sir, I think  
13 that was the only one.

14 SENATOR MALLOY: We've talked a little  
15 bit about stare decisis, and there has been a  
16 lot of ways that it's been said. And one of  
17 the questions that has come -- come before us  
18 is that for matters of controversy that are  
19 unsettled, is it better to have a matter  
20 settled in general, than to have it settled  
21 right? Or whenever you have a case that comes  
22 before you and it's a novel issue, you know,  
23 is there any thought process as to whether you  
24 leave it unsettled because it doesn't address  
25 it? And didn't go as far as you want it --

1 want it to go, if that makes sense at all. So  
2 I guess if I can narrow it down, is it better  
3 to leave it unsettled, or settle it in part or  
4 wait until you can hopefully settle it right?

5 JUDGE WILLIAMS: I think it's going to be  
6 better left -- to leave it unsettled in the  
7 sense that I think we should only resolve  
8 issues that are presented, decide the case  
9 that's before us, I guess, is the phrase that  
10 I would use. So if it is something that's not  
11 before us, should the court then expand and  
12 answer other issues? I -- I don't think that  
13 has been the -- the history of appellate  
14 courts, and -- and I understand why. But  
15 again because how it's being presented may be  
16 different method presented in just the right  
17 way, but the court going in and recognizing  
18 issues and deciding, let's go ahead and  
19 resolve all these other issues that aren't  
20 presented to us. I think we create all sorts  
21 of problems if that was the case. I think  
22 that looking at the narrower issue presented  
23 and deciding that case.

24 SENATOR MALLOY: There's certain  
25 circumstances whenever we have statutes here

1 in the General Assembly, and a lot of times we  
2 have the construction of a statute that is  
3 necessary for the General Assembly, that the  
4 court looks upon the -- the General Assembly  
5 to address the present issues concerning a  
6 statute. And so then the question becomes is  
7 that if it's a matter of the constitution and  
8 the General Assembly does not address it, do  
9 you believe that there is ever a time that you  
10 would have a judicial rescue of sorts?

11 JUDGE WILLIAMS: I think that -- that my  
12 history on the court has been, I guess, in  
13 looking at how -- and what I've seen other  
14 judges do, and I've gone to national  
15 conferences and looking at how appellate  
16 courts work. I still think that the court  
17 needs to be narrow when it addresses, and  
18 address only those issues presented to the  
19 court. And if it's not something presented,  
20 we don't -- we don't address it.

21 I don't think I will be one to be quick  
22 to suggest that we go outside what's presented  
23 to us and go looking for issues to resolve.

24 SENATOR MALLOY: Thank you.

25 CHAIRMAN CLEMMONS: Thank you, Senator.

1 Dean Wilcox.

2 EXAMINATION

3 (By Dean Wilcox)

4 DEAN WILCOX: First I would like to place  
5 on -- first I'd like to place on the record  
6 just a matter of disclosure, that Judge  
7 Williams, like several of our candidates, is  
8 very active in working with law students,  
9 including teaching and grading exams for a  
10 family law court. So I very much appreciate  
11 his service to the law school. And also his  
12 wife Sharon has been employed at the law  
13 school since, I think, before I came back as a  
14 faculty member some years ago, so I'd just  
15 like to make sure that's clear on the record.

16 Judge, in addition to what you've done  
17 for the school -- thank you very much for the  
18 many years of service and -- and for  
19 continuing to -- to seek additional ways to  
20 serve the state -- you obviously, by your  
21 comments early on put a lot of importance on  
22 the communications among lawyers, collegiality  
23 within the profession. One of the most  
24 damaging public perceptions, however, that can  
25 arise out of a court is that decisions are

1           being made for reasons other than the record  
2           and the law in front of the court.  They're  
3           being made because of personal relationships  
4           or something.

5                         How, over the years as a judge, have you  
6           worked to keep the collegial relationships  
7           with the profession with lawyers who appear in  
8           front of the court but avoid that perception  
9           that there's favoritism potentially shown  
10          because of those relationships?

11                        JUDGE WILLIAMS:  I think I've had to be  
12          very careful, because I do think it's  
13          important to have some relationship with the  
14          Bar.  If we cut ourselves off -- the judges  
15          cut themselves off from the Bar, that's when I  
16          see that the road gets heavy.  They forget  
17          what it's like to practice law.  Practicing  
18          law is very difficult.  And -- and so I think  
19          there needs to be some relationship.

20                        But certainly, there is a line.  And  
21          knowing where that line is -- and so I  
22          participate in Bar functions -- Judge Joe  
23          Anderson, you know, we -- we go -- we're --  
24          we're always there, always have been there.  
25          We're going to -- we're going to be at the Bar

1 functions, the law school functions, because  
2 we -- you know, it's part of what I've been  
3 elected to do, because I think that is  
4 something that is an appropriate thing to do,  
5 to have a relationship with lawyers, to -- to  
6 a point.

7 Again, back in my trial court days, I  
8 always looked at the docket ahead, especially  
9 so -- Judge Anderson and I used to go -- still  
10 do on occasion -- go have coffee with lawyers  
11 in the morning at Lizards Thicket, in -- in  
12 football season in particular, for those who  
13 are football fans. You know, Wofford  
14 Terriers, some years yes, some years no. But  
15 I would not go and -- because certainly I  
16 wouldn't want to be sitting having coffee when  
17 the lawyer is going to show up in my courtroom  
18 later. And I -- and I try to do the same  
19 thing with what I do now.

20 But to -- to say there shouldn't be some  
21 relationship -- and my -- my purpose in saying  
22 that is, especially lawyers between the  
23 lawyers, relationships of theirs is what I try  
24 to encourage the most. I mean judges, we have  
25 certain lines we have to draw and certain

1 things we can't do. And so we abide by those.  
2 But I encourage lawyers to talk to each other,  
3 so that if there is a need for a continuance  
4 -- also I go back to the day of Judge Riddle  
5 and I because I knew what her children were  
6 doing in school. She knew what my children  
7 were doing, and we knew they were involved in  
8 dance or -- or athletics or whatever. So if  
9 there was an issue, easy to pick up the phone  
10 and ask for a continuance and agreed to  
11 something because we knew each other, we  
12 trusted each other. There is that level of  
13 trust.

14 Maybe we don't have that as much because  
15 of iPhones and other types of communication.  
16 We're losing some things. So I encourage the  
17 collegial atmosphere between lawyers. And I  
18 think it's good for the judges to be involved  
19 with the Bar and the Bar in activities. But  
20 again, there is a point where I -- I know I  
21 have to stop certain things I can't do, that I  
22 won't do.

23 So it's -- as a matter of fact, after  
24 talking with Judge Duffy, we talked about a  
25 golf conference that's been around for some 35

1 years with a very diverse group from all over  
2 the state. And I look at those relationships  
3 and say -- I watch those lawyers on the other  
4 side of the case from each other, how they  
5 talk, work with each other, they -- it just  
6 has to make the practice of law better, which  
7 is benefitting the clients because of being  
8 involved with things like that.

9 So I encourage -- but I had a student who  
10 came back -- and maybe it was your class -- I  
11 don't know -- but the question arose, well  
12 gosh, those -- those personal relationship  
13 that you have, how do you avoid that  
14 appearance of impropriety? And that's  
15 certainly always a concern. So that we do  
16 certain things, certain times I won't do,  
17 certain places I won't be. But there are  
18 times that, sure I'll have a cup of coffee  
19 with someone. But no, we're not going to  
20 discuss a case. We're not going to talk about  
21 matters of substance, that we all know we  
22 can't. And for me, I look at that, I think  
23 the lawyers understand that and that's never  
24 been an issue.

25 But for a judge to cut themselves off

1 completely from the Bar, that's when I hear  
2 you're going to have judges who -- you have  
3 concerns about temperament. It's -- you have  
4 concerns because they -- they're not having  
5 that contact and not hearing some of the  
6 concerns we raised like it's not sure why they  
7 don't, but I used to ask my law partner, who  
8 didn't appear before me, "What's the word on  
9 the street? How am I doing? You know I want  
10 to get better at it." So part of that is  
11 being around to hear and listen maybe not  
12 about me and what I'm doing, but about others  
13 and what they're doing, so I can do a better  
14 job.

15 I hope I've answered your question, Dean.  
16 It -- it's just -- it's -- it's trying to find  
17 the right balance to do it. But I think that  
18 the judges, you -- you know there's a line and  
19 certain things you can't do. And you draw  
20 that line. And over the years, I think the  
21 lawyers know and respect that. And -- and,  
22 you know, the idea of the -- being biased or -  
23 - or partial because of that relationship,  
24 I'll go back to the -- what you mentioned  
25 earlier, the responses to the -- to -- from

1 the Bar on the judges and what they thought of  
2 me and how I perceived it. I've been very  
3 fortunate over the years.

4 Back in the old days when I was in Family  
5 Court, they used to do a survey every year of  
6 what the lawyers thought of the judges. And  
7 what I pride myself on -- and I wish I had  
8 gotten to Tommy Cooper's level, which was like  
9 about a tenth of a point higher -- but it was  
10 -- you know, one of the criteria was that  
11 impartiality, you know, and how you do things.  
12 And fortunately I was -- the Bar was gracious  
13 and I was always the top rated Family Court  
14 judge, for a better way of putting it, that  
15 was -- but that's one of the criteria that I  
16 always prided myself on, is that was the  
17 perception of what I did.

18 I think what I hear from the Bar and the  
19 responses to -- my efforts to move to another  
20 court appears to be the same. So I hope over  
21 the years I have found that right balance, so  
22 that that is their perception of what I do.  
23 But I am not bias; I'm very cautious about  
24 that. Don't want the appearance of being  
25 biased. And -- and so I look at the -- again,



1 still discussions that are ongoing, or that  
2 will be ongoing. I attended the solicitors  
3 conference this year and main purpose was to  
4 talk about drug courts and their participation  
5 and continued growth of drug courts across the  
6 state. But one question I asked was just  
7 asking about the discussions. And what I --  
8 what I hear is that maybe the discussions need  
9 to -- need to begin in earnest.

10 And, you know, the questions you all  
11 raised today about separation of powers, for  
12 example, and courts overstepped, it seems as  
13 though when you have what some refer to as a  
14 constitutional crisis. And you read articles  
15 about that and how they're resolved. Or in  
16 this issue, this controlled court, controlled  
17 docket, how should it be resolved. If you  
18 look at those constitutional issues that have  
19 been raised, and there's this constitutional  
20 crisis when a particular branch oversteps its  
21 bounds. It appears it's been resolved by a  
22 discussion and it's been resolved that way.

23 I would suggest that that is something  
24 that I would hope would be done with this. I  
25 know the solicitors and it -- it would be all

1 the players at the table with solicitors, the  
2 defense bar, the court, that there could be  
3 some discussion to help resolve any issues  
4 that still exist there. As I said, my  
5 committee was formed to review it and start  
6 the discussions, and I hope they do that. I  
7 think that's how the issue gets resolved.

8 It is like most things in life, finding  
9 the right balance, having that discussion,  
10 just like with the guardian issue, one of the  
11 most highly contested issues in the state for  
12 a couple of years. At least for two years  
13 that issue went on. Very harmful to the court  
14 system and Family Court in particular. It got  
15 resolved through discussion; ultimately  
16 legislation resolved through legislative  
17 process. The Supreme Court did something with  
18 it. But then the legislature took it and  
19 resolved it, bringing all the parties to the -  
20 - to the table looking at all those issues.  
21 But it was through that discussion ultimately  
22 resolved it.

23 And again, I go back and look now, that's  
24 an issue that's still, weathered pretty well  
25 and that's been a long time ago. And I think

1           that I'm one of those, because of my -- my  
2           interest in drug court -- when we started drug  
3           court, it was not a popular program.  
4           Solicitors were not necessarily in favor of  
5           drug court and that was a big risk because it  
6           was perceived as a warm and fuzzy program.  
7           And to a point, there is a little bit of that.  
8           But it's about accountability and  
9           responsibility. But it was not popular at  
10          first. But then after discussion and after  
11          everyone understood what the issues were and  
12          what the court does and how it works, it began  
13          to grow.

14                 Even in -- in South Carolina when we had  
15                 limited resources, we had gone from the  
16                 original four of us to now 30 plus courts  
17                 across the state. When I first went to a drug  
18                 court conference, there was probably  
19                 hundreds. Now there are 3000-plus drug courts  
20                 across the country, because of that  
21                 discussion.

22                 So I guess that's an example of when you  
23                 stop and talk, have those discussions, I still  
24                 think ultimately these issues that have been  
25                 raised regarding the docket, that may be the

1 place to resolve it, if they are still -- and  
2 apparently there is some discussion. We  
3 wouldn't have formed a committee if they  
4 didn't think there were still some issues and  
5 concerns to be resolved. But I think that  
6 discussion would -- would need to start. And  
7 again, that's the way over the years I've  
8 always tried to -- to -- to be involved,  
9 again, whether it's the guardian issues, the  
10 growth of drug courts -- Judge Keesley and I -  
11 - Judge Keesley -- he -- he's kind of the  
12 grand -- I call him grandfather of the drug  
13 court because he -- he started about four  
14 months before I did. There were four of us  
15 within six months and he's got more gray hair  
16 than I do, so I call him grandfather of the  
17 drug court.

18 But we first got all the players to the  
19 table and -- and we figured out we had 24  
20 different agencies, entities who had something  
21 to do with the impact of the drug courts in  
22 South Carolina. Got everyone to agree. Found  
23 out we're missing three. Ready to go find  
24 three more. They put 27 when we had to, to  
25 get on board, to do. There was legislation

1 drafted, but -- but my point is, it is  
2 bringing folks to the table and talking so  
3 there's understanding, which is why I think  
4 there's been success ultimately across the  
5 country with drug courts, because of that  
6 understanding. One, because it works, for  
7 example, once folks have seen that. And two,  
8 it saves a tremendous amount of money. And so  
9 it works, it saves lives, saves families.  
10 There's so many good things about it. The  
11 other part is it saves a whole lot of money.  
12 But through that discussion, through that  
13 discussion, that's how we get where we are now  
14 here. Here I hope it gets even better. And I  
15 would suggest the same thing, it's something  
16 we ought to do with Langford, is have that  
17 discussion and let's see if there are issues  
18 that are there.

19 I've been fortunate over the years. And  
20 I guess, I hear and seen issues, they seem to  
21 get resolved, and I -- I think that's --  
22 that's one we can resolve as well. And again,  
23 I'd love to have the opportunity to be there  
24 and be part of that discussion. And I think  
25 you can bring folks together and get things

1 resolved.

2 CHAIRMAN CLEMMONS: And with regard to  
3 that issues and others like it, do you see --  
4 how do you see the court's role? What part  
5 does the court play in facilitating those  
6 discussions, negotiations, however cast them.

7 JUDGE WILLIAMS: Well, the -- the court  
8 has formed a committee to at least -- to begin  
9 the discussions. Again, I'm one of those --  
10 and again, I don't know the makeup of the  
11 committee at this point, but I'm one of those  
12 who would say if -- if I was sitting at a  
13 table, that is if you can't tell from what I  
14 said before, I'm about broadening those who  
15 participate in these discussions. It is being  
16 much more inclusive and -- and in the  
17 collaborative effort to find resolution to  
18 issues that we have. So it would be broadened  
19 and make certain that everyone's at the table,  
20 to be able to discuss and see if we could  
21 resolve.

22 And -- and you know it's -- it's -- it's  
23 like -- you know, sometimes we don't get  
24 things resolved because nobody ever starts the  
25 conversation. Let's start the conversation.

1 Let's do something. It's -- it's -- that's  
2 the one thing about drug court and trying to  
3 do something -- or not just drug court, but  
4 just other things in general. Let's do  
5 something. Let's just don't talk about it.  
6 Let's go and do something.

7 And that's what I think that at least  
8 with things I've been involved in, I try to do  
9 -- hopefully I've helped along the way and get  
10 help because I don't think it's one person who  
11 does it. I think it ends up being a  
12 collective group ends up resolving. And --  
13 but getting the discussion started and going,  
14 I think it's important that we -- we start  
15 that and hopefully it -- it resolves.

16 CHAIRMAN CLEMMONS: Thank you. I have  
17 one last question. And I'm just asking you to  
18 give me a little insight as to how you prepare  
19 for the exam that was administered as a part  
20 of this process, and does anyone help you  
21 facilitate that preparation.

22 JUDGE WILLIAMS: I've gone back in the  
23 past and looked at all the exams and this year  
24 was a little different. As a practical  
25 matter, I think we had a new -- new person,

1 but as far as preparation I have notebooks of  
2 prior years then go back and look at the  
3 different issues presented to the court and  
4 how they're presented.

5 This year I spent a lot of time looking  
6 at issues presented to the Supreme Court,  
7 which there really wasn't a whole lot about on  
8 the exam, as it turned out, and the focus was,  
9 as I recall, most -- mostly on reviewing  
10 particular cases and memorization of cases if  
11 I recall. But it's -- it's reviewing those,  
12 that that would be how. But again, this year  
13 the tests were slightly different than the  
14 past years, where there's been more procedural  
15 issues, to some degree, looking at the duties.  
16 And again, I focused greatly on the Supreme  
17 Court, which I didn't see a lot of as far as  
18 certain particular things I thought might have  
19 been there.

20 But again, this happened years ago back  
21 in Family Court when there was a difference in  
22 someone who prepared the test, a little  
23 different nuances to what -- what to look for.  
24 But -- so again, I have a notebook that I use  
25 in reviewing the cases. And, again, slightly

1 different than past years, so --

2 CHAIRMAN CLEMMONS: Do any of your staff  
3 or others help you prepare for the exam?

4 JUDGE WILLIAMS: In this instance, I  
5 think the only thing that I had -- I had a law  
6 clerk prepare -- help me prepare a notebook of  
7 cases.

8 CHAIRMAN CLEMMONS: Thank you very much.  
9 Those are all the questions I have. Are there  
10 any further questions?

11 (No response.)

12 CHAIRMAN CLEMMONS: Hearing none, thank  
13 you so much, Judge Williams. We appreciate  
14 your being here with us.

15 JUDGE WILLIAMS: One other thing -- I  
16 hate to do this, but I guess it's one question  
17 that Senator Campsen just asked me. The only  
18 thing is, I guess, is the recusal issue that  
19 you asked about. And -- and I look at that  
20 strictly from my perspective and over the  
21 years in Family Court and the Court of Appeals  
22 when I've ever felt like that I couldn't be  
23 fair or that there was an appearance of  
24 impropriety, that is a personal decision, to  
25 say that every judge would make the same

1 decision, I don't know. But I would say with  
2 me, it was always erred because of what I said  
3 to you in the very beginning. Folks have to  
4 leave that courtroom knowing -- knowing that  
5 they had a fair hearing, the judge cared about  
6 making sure that happened and took every step  
7 possibly.

8 So with that being said, yes, I wouldn't  
9 want someone to come to the courtroom on the  
10 other side or somebody to have an advantage.  
11 It is a very personal decision with judges,  
12 following the rules, but that is something  
13 very important to me over the years.

14 SENATOR CAMPSSEN: Thank you.

15 CHAIRMAN CLEMMONS: Thank you, Judge.  
16 Judge Williams, we appreciate your being here  
17 and offering yourself for this position. That  
18 concludes this portion of the screening  
19 process.

20 As you know, the record will remain open  
21 until the report is published and you may be  
22 called back at such time if the need arises.  
23 I'll remind you of the 48-hour rule and ask  
24 you to be mindful of that. Anyone that may  
25 inquire with you about whether or not they may

1 advocate for you, in the event that you are  
2 screened out, as you've described the 48-hour  
3 rule, we would ask that you remind them of  
4 that. We thank you for offering and we thank  
5 you for your service to South Carolina, Judge.

6 JUDGE WILLIAMS: Thank you for your  
7 courtesy.

8 (Candidate excused.)

9 CHAIRMAN CLEMMONS: Chair will entertain  
10 a motion to go into executive session.

11 MS. WALL: So moved.

12 REPRESENTATIVE MACK: Second.

13 CHAIRMAN CLEMMONS: For the purpose of  
14 discussing and making findings regarding  
15 qualifications. So we have a motion and  
16 second. Those in favor, say aye.

17 BOARD MEMBERS: Aye.

18 CHAIRMAN CLEMMONS: We will lower the  
19 veil and have a two minute break before we go  
20 into executive session. That's a great idea.

21 (Off-the-record executive session.)

22 CHAIRMAN CLEMMONS: We have four  
23 candidates remaining and with regard to those  
24 four candidates, is it the pleasure of the  
25 Commission that we vote on the group with

1 regard to finding them qualified or otherwise?

2 SENATOR CAMPSSEN: Yes.

3 CHAIRMAN CLEMMONS: We have a motion then  
4 to find the four remaining candidates  
5 qualified.

6 SENATOR MARTIN: Second.

7 CHAIRMAN CLEMMONS: Senator Martin  
8 seconds that motion. Is there any discussion?

9 (No response.)

10 CHAIRMAN CLEMMONS: Hearing none, all  
11 those in favor say aye.

12 BOARD MEMBERS: Aye.

13 CHAIRMAN CLEMMONS: Those opposed?

14 (No response.)

15 CHAIRMAN CLEMMONS: The ayes have it.  
16 All four candidates have been found qualified  
17 and now we will move to nomination. Thank  
18 you. And for the record -- thank you, Ms.  
19 Dean, for the reminder. For the record, we  
20 have risen from executive session. No votes  
21 have been taken or decisions made during  
22 executive session.

23 All right now, to move onto the  
24 nomination process. The voting procedure is  
25 as follows. The chair will call the names of

1 the qualified candidates in alphabetical  
2 order. Each commission member has three votes  
3 to pass to find an individual qualified and  
4 nominated. Any candidate that receives six or  
5 more votes will be considered qualified and  
6 nominated at the end of that vote. Any  
7 candidate that does not get any votes will be  
8 removed from consideration on any subsequent  
9 ballot that occurs. Are there any questions  
10 or concerns?

11 (No response.)

12 CHAIRMAN CLEMMONS: Hearing none, thank  
13 you, we will move to balloting. We all got  
14 our ballots. So the first candidate for  
15 consideration is Anderson, Judge Anderson. So  
16 if you desire to vote for Judge Anderson, we  
17 ask that you'd raise your hand.

18 (The Commission members vote.)

19 CHAIRMAN CLEMMONS: Next candidate is  
20 Judge John Cannon Few. Those that would like  
21 to find Judge John Cannon Few nominated,  
22 please raise your hand.

23 SENATOR MALLOY: We have a proxy for  
24 Kristian Bell for Judge Few.

25 (The Commission members vote.)

1                   CHAIRMAN CLEMMONS: The next candidate  
2 for consideration is The Honorable Aphrodite  
3 Konduros. All those in favor of nominating  
4 Aphrodite Konduros, please raise your hand.

5                   SENATOR MALLOY: And a proxy from  
6 Kristian Bell.

7                   (The Commission members vote.)

8                   CHAIRMAN CLEMMONS: With regard to The  
9 Honorable Harris Bruce Williams.

10                  SENATOR MALLOY: I have a proxy for  
11 Kristian Bell.

12                  CHAIRMAN CLEMMONS: So that is six.  
13 That's a problem.

14                  (Off-the-record discussion.)

15                  CHAIRMAN CLEMMONS: We'll stand at ease  
16 for a few minutes.

17                  (Off the record.)

18                  CHAIRMAN CLEMMONS: We are no longer at  
19 ease; we're back on the record. We find  
20 ourselves with a runoff between Aphrodite  
21 Konduros and Harris Bruce Williams, to find a  
22 third member of the panel to nominate. So we  
23 will handle the runoff as we have historically  
24 handled the runoff. Each member has one vote,  
25 and that vote may be cast for either Konduros

1 or Williams. So those that would find Judge -  
2 - I did it again. Senator Malloy has the  
3 proxy for Ms. Kristian Bell. So Senator  
4 Malloy, you have two votes.

5 SENATOR MALLOY: I got her proxy and it's  
6 in writing.

7 CHAIRMAN CLEMMONS: Very good. Those in  
8 favor of finding Aphrodite Konduros nominated,  
9 please raise your hand.

10 (The Commission members vote.)

11 SENATOR MALLOY: Proxy for Bell,  
12 Konduros.

13 CHAIRMAN CLEMMONS: 1, 2, 3, 4, 5. Those  
14 in favor of finding Harris Bruce Williams  
15 nominated, raise your hand.

16 (The Commission members vote.)

17 CHAIRMAN CLEMMONS: We're 5 to 5. We  
18 will re-ballot until we come to a majority  
19 decision. Those in favor of Aphrodite  
20 Konduros, raise your hand.

21 (The Commission members vote.)

22 CHAIRMAN CLEMMONS: 1, 2, 3, 4.

23 SENATOR MALLOY: And the proxy.

24 CHAIRMAN CLEMMONS: And the proxy, 5.  
25 Those in favor of Williams.

1 (The Commission members vote.)

2 CHAIRMAN CLEMMONS: Let's go again.

3 Those in favor of Konduros, raise your hand.

4 (The Commission members vote.)

5 SENATOR MALLOY: Proxy.

6 CHAIRMAN CLEMMONS: And those in favor of  
7 Williams.

8 (The Commission members vote.)

9 MS. WALL: I move we go into executive  
10 session.

11 CHAIRMAN CLEMMONS: Have a motion for  
12 executive session.

13 MR. MACK: Second.

14 CHAIRMAN CLEMMONS: I have a second.

15 (Off-the-record discussion.)

16 CHAIRMAN CLEMMONS: Generally we go into  
17 recess at this time, unless we have a matter  
18 that requires executive session.

19 MS. WALL: Recess is fine. We're looking  
20 for legal advice.

21 CHAIRMAN CLEMMONS: So the motion to go  
22 into executive session has been withdrawn and  
23 the second has been withdrawn. We will now  
24 stand at ease.

25 (Off the record.)

1                   CHAIRMAN CLEMMONS: Let's go back on the  
2 record for a moment. I would suggest that we  
3 adjourn for the evening, come back in the  
4 morning and continue to vote.

5                   SENATOR MALLOY: Mr. Chair.

6                   CHAIRMAN CLEMMONS: Senator Malloy.

7                   SENATOR MALLOY: I would respectfully  
8 move that we go into executive session to get  
9 some legal advice as it relates to what our  
10 responsibilities are or what they can be prior  
11 to adjourning, because I don't want to go home  
12 --

13                  CHAIRMAN CLEMMONS: Is that a motion,  
14 Senator?

15                  SENATOR MALLOY: So moved.

16                  CHAIRMAN CLEMMONS: Can I have a second?

17                  MR. HITCHCOCK: Second.

18                  CHAIRMAN CLEMMONS: And a second. Those  
19 in favor, say aye.

20                  BOARD MEMBERS: Aye.

21                  CHAIRMAN CLEMMONS: We are going into  
22 executive session.

23                  (Off-the-record executive session.)

24                  CHAIRMAN CLEMMONS: Ladies and gentlemen,  
25 we have receded from executive session. We

1           went into executive session for legal advice,  
2           and based upon that legal advice, we discussed  
3           further the qualifications of candidates, and  
4           we are back on the public record now and we  
5           will continue that discussion. No decisions  
6           were made, no votes were taken during  
7           executive session. I would open the floor for  
8           discussion of qualification of the candidates.  
9           Dean Wilcox.

10           MR. WILCOX: Looking at the reviews from  
11           the Bar and the public committees, it is clear  
12           that both of these candidates receive the very  
13           top recommendations from both the Citizens  
14           Committee and the Bar. Looking at the ballot  
15           box entries on both of them, looked at in  
16           detail -- what makes this a very difficult  
17           choice for us is I think in terms of judicial  
18           temperament, both of these rank at the very  
19           top in terms of judicial temperament.

20           When you read the ballot box  
21           recommendations from lawyers, both reflect  
22           that these are judges who are well-respected  
23           as being of right judicial temperament to  
24           manage a courtroom, to keep control of the  
25           courtroom, and yet to be courteous and

1 respectful of the parties in front of the  
2 court.

3 Looking at the legal knowledge, neither  
4 one of them seems to have any significant  
5 holes in their legal knowledge. They both  
6 scored well on their tests that were  
7 administered. They both, again, get  
8 subjective reviews from people that they have  
9 written good opinions in the past on their  
10 courts.

11 And so when you look at these two, we're  
12 dealing with two potentially excellent  
13 candidates for the court. Our difficulty is  
14 choosing one of those two. This is not a case  
15 of balancing weaknesses. It is a case of  
16 balancing strengths on them.

17 I have been I think on record as  
18 indicating certainly my vote for both of them  
19 initially. Obviously, I am not going to get  
20 both of them through this process at this  
21 point. And so I'm in that difficult position  
22 of trying to balance two that I think are  
23 qualified, well-qualified, which of the two.  
24 We should choose.

25 I will tell you that in part my opinion

1 of Judge Williams is influenced by my  
2 perceptions of him as a judge, as a member of  
3 the Bar. He has had a long career on the  
4 bench. He certainly has acquitted himself  
5 extremely well. I think I came in today with  
6 every expectation he would be one of the  
7 candidates. And to this point at least I have  
8 not been willing to change that expectation.  
9 And so it is a very, very difficult call  
10 between these two outstanding jurists. And  
11 the state of South Carolina is going to be in  
12 good shape, whichever one that is in the pool.

13 CHAIRMAN CLEMMONS: Thank you, Dean  
14 Wilcox. Other comments.

15 (No response.)

16 CHAIRMAN CLEMMONS: Then we'll proceed to  
17 ballot. We have before us The Honorable  
18 Aphrodite Konduros, being considered for  
19 nomination. All those in favor Aphrodite  
20 Konduros, raise your hand.

21 (The Commission members vote.)

22 CHAIRMAN CLEMMONS: Thank you. And The  
23 Honorable Harris Bruce Williams. All those in  
24 favor of finding him nominated, raise your  
25 hand.

1 (The Commission members vote.)

2 CHAIRMAN CLEMMONS: Based upon balloting,  
3 this Commission has found The Honorable Ralph  
4 King Anderson, III, The Honorable John Cannon  
5 Few and The Honorable Harris Bruce Williams  
6 nominated to Seat 2 of the South Carolina  
7 Supreme Court. Having found all three of them  
8 and The Honorable Aphrodite Konduros  
9 qualified. Thank you very much for your  
10 service.

11 SENATOR MALLOY: Mr. Chairman.

12 CHAIRMAN CLEMMONS: Yes, sir.

13 SENATOR MALLOY: In light of the hour,  
14 will the committee consider -- we are suppose  
15 to come in at nine in the morning, just to  
16 come in at ten, for those that plan on driving  
17 back?

18 CHAIRMAN CLEMMONS: The suggestion is  
19 that we come in at ten instead of nine  
20 tomorrow. If we do that, if we come in at  
21 nine instead of ten, we're currently scheduled  
22 to be in votes at 5:30. That means that we  
23 will push that back an hour, so at least an  
24 hour, depending upon how it flows.

25 (Off-the-record discussion.)

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CHAIRMAN CLEMMONS: We will adjourn until  
9:45 tomorrow morning.

(There being no further questions, the  
proceedings adjourned at 9:06 p.m.)

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CERTIFICATE OF REPORTER

I, LISA F. HUFFMAN, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE SAID PROCEEDINGS, ON THE 16TH DAY OF NOVEMBER, 2015, THAT THE WITNESSES WERE FIRST DULY SWORN AND THAT THE FOREGOING 296 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID PROCEEDINGS TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO, JUDICIAL MERIT SELECTION COMMISSION, 1101 PENDLETON STREET, COLUMBIA, SOUTH CAROLINA 29201, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

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LISA F. HUFFMAN, COURT REPORTER  
MY COMMISSION EXPIRES JULY 25, 2025

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